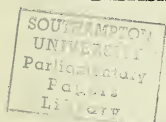


**IN THE COURT OF THE TRANSPORT TRIBUNAL**  
**TRANSPORT ACT, 1947, AS AMENDED BY TRANSPORT ACT, 1953**

**IN THE MATTER OF THE APPLICATION OF THE**  
**BRITISH TRANSPORT COMMISSION (1958 No. 1)**



**To Confirm the**  
**British Transport Commission (Passenger)**  
**Charges Scheme, 1958**

**FRIDAY, 13TH MARCH, 1959**

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**TWENTIETH DAY**

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# PROCEEDINGS OF THE TRANSPORT TRIBUNAL

FRIDAY, 13th MARCH, 1959

PRESENT :

SIR HUBERT HULL, Kt., C.B.E. (*President*)

J. C. POOLE, Esq., C.B.E., M.C.

H. H. PHILLIPS, Esq., O.B.E.

Mr. E. STEWART FAY, Q.C., and Mr. PATRICK BROWNE (instructed by Mr. M. H. B. Gilmour, Chief Solicitor to the British Transport Commission) appeared on behalf of the British Transport Commission.

Sir MILNER HOLLAND, Q.C., C.B.E., Mr. LEON MACLAREN, and Mr. GEORGE MERCER (instructed by Mr. J. G. Barr, Solicitor to the London County Council) appeared on behalf of the London County Council, Hampstead Borough Council and the Islington Borough Council.

Mr. B. J. MACKENNA, Q.C., and Mr. D. A. GRANT (instructed by Mr. Kenneth Goodacre, T.D.) appeared on behalf of the Middlesex County Council, Berks. County Council, Bucks. County Council, Hertford County Council and Surrey County Council.

Mr. DUDLEY COLLARD (instructed by Mr. E. R. Farr) appeared on behalf of the Barking Borough Council and the South Essex Traffic Advisory Committee.

Mr. LEON MACLAREN and Mr. GEOFFREY RIPPON, M.P. (instructed by Mr. Vernon Lawrence, O.B.E.) appeared on behalf of Anglesey, Cambridge, Cheshire, Cumberland, Denbigh, Dorset, Durham, Flint, Glamorgan, Hampshire, Isle of Ely, Isle of Wight, Lancs., Leicester, Merioneth, Monmouth, Norfolk, Northampton, Nottingham, Oxford, Soke of Peterborough, Somerset, Stafford, West Sussex, Worcester and Kent County Councils.

Mr. D. A. GRANT (instructed by Mr. R. Webster Storr) appeared on behalf of Beckenham Borough Council.

Mr. GEOFFREY RIPPON, M.P., and Mr. ROY CALVOCORESSI (instructed by Mr. G. E. Smith) appeared on behalf of West Ham County Borough Council, East Ham County Borough Council, Croydon County Borough Council, Walthamstow Borough Council and Wanstead and Woodford Borough Council.

Mr. S. H. NOAKES (instructed by Mr. N. P. Lester) appeared on behalf of Hastings Borough Council.

Mr. A. E. TELLING (instructed by Messrs. Radcliffe & Co.) appeared on behalf of the London Passengers' Association.

Mr. P. T. LEWIS (instructed by Messrs. Gaby Hardwicke & Co.) appeared on behalf of the Hastings, Bexhill & District Season Ticket Holders Association.

Mr. ARCHIBALD GLEN, Town Clerk, appeared on behalf of the Southend-on-Sea County Borough Council.

Mr. F. A. RULER, represented the Federation of Residents' Associations in the County of Kent.

Mr. D. J. D. WELLUM, represented the Benfleet & District Railway Travellers' Association.

Mr. JOHN MAGUIRE, F.C.I.S., represented the United Commercial Travellers' Association of Great Britain and Ireland.

Miss DOROTHY D. FORSTER, represented the Walthamstow Trades Council.

Mr. G. A. BAGNALL, represented the Herne Bay Urban District Council.

(*President*): Is anyone here from the Imberhorne Residents' Association, because this is their last opportunity? (*No reply.*) Very well, Mr. Fay.

(*Mr. Fay*): May it please you, Sir; on the Tenth Day of this Inquiry the British Transport Commission closed their case, and I ventured to make the remark that we had then reached the half-way point. Today, on the Twentieth Day, I rise to make my final address to you upon this case. I think, perhaps, my reference to the half-way mark was the only successful forecast of time which I have made in the course of this case, and, with that in mind, I have abstained from even asking myself how long I am going to trouble the Tribunal on this occasion. But I have many matters to deal with. I do not propose to deal with matters which are hardly in controversy, no matter whether they seemed to be at the outset, and I hope I shall succeed in confining myself to those matters upon which I can give the Tribunal some assistance.

Before I embark upon this task, may I express the British Transport Commission's appreciation of the assistance they have received, both within and without this Court, from the Objectors in this case, who have all approached this Inquiry with the object of assisting the Tribunal, and with whom, in many instances, there has been close and friendly liaison behind the scenes which has shortened the proceedings considerably. I should like also to pay tribute to the arrangements that have been made, both physical and regarding the timing of the sittings, for the convenience of all of us by the Tribunal and the officials of the Tribunal. Finally, may I make this observation, which I am sure I make on behalf of all of us, that we are all greatly indebted to those who produce the transcript of the Shorthand Notes with such celerity and such accuracy, both those Shorthand Writers whom we see here and those in the Stationery Office whom we do not see, but whom, we suspect, do some night work for our convenience.

Coming to the burden of my observations to you, may I commence with two general observations. The first is this: The witnesses whom I have called in the course of this Inquiry have, on the one hand, given facts which, I think, have been generally accepted by those opposed to this Application, and they have also given opinions and a judgment which have not, in some instances, altogether been accepted. Of course, there is no reason why a judgment or an opinion should not be questioned, but I do wish to make this point at the outset, that, when the Commission's witnesses have made forecasts, they have done so with one object in mind, that of making an accurate forecast. There are no bargaining figures put forward in this case. We do not come to this kind of Inquiry pitching our claim a little higher than we expect to have it accepted in the hope that when something is knocked off by the Objectors we shall be back where we hoped to be. That is a process familiar to many of us at the Bar who have settled running-down cases in the corridor outside the Court, but there is nothing of that element in this case whatever. I am sure I need not labour that point with the Tribunal, but sometimes I have the feeling that it is not altogether appreciated by some of the Objectors. I say this because—and this is the plain fact—the Commission put forward this Application as something which they need to have, and if at the end of the day they go away with charging powers less than they have asked for, they will feel—as has, indeed, happened before—that what has happened has merely accelerated the time at which another Application will have to be made. They have looked ahead and they have not asked for a pennyworth more of charging powers than they feel is essential to the proper conduct of their operations from the time when this Scheme, when approved, goes into force.

The second general observation I would wish to make, again directed rather more at the Objectors than at the Tribunal, is this: It is inherent in any Scheme of Maximum Charges that within the maxima, as, indeed, the

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[Continued]

Statute expressly states, the Commission are to be free to fix the actual fares. Some of the Objectors have clearly shown a disposition to think that the Commission cannot be trusted with this discretion. It is cast upon them by law, but we have had Objectors who have come here and have used the word "fear", they fear what the Commission will do within their new maxima. They seem to think that in some way the Commission will be either rapacious or ill-advised. I would submit that no conception could be further from the truth of the matter. The truth is this, that large organisations such as the Commission do conduct their operations with a due appreciation of their responsibilities. They appreciate they have their place in the nation's economy and it lies within their power to affect that economy by the way in which they operate their charging policy. There are many other large organisations in the same situation. The foundation, I suppose, of the industrial life of this country, indeed the whole life of this country, is power, which in these days means either coal or oil. Coal is a nationalised industry and oil is a privately-owned industry, but neither of them is subject to any form of price control. They are subject to internal and external sanctions outside this kind of control and they behave, one would have thought, with a due regard to the national interests and adjust prices, when they do, with a sense of responsibility; but for historical reasons—and I do not complain about it—public transport by land has been subject for many decades to a varying and degree of price control, and I venture to think it is because of this historical fact that some people appear to think that unless control is clamped down upon the providers of public transport by law so that the maximum, when it is a maximum charge, is, in fact, at or very little above the actual, there will be some irresponsible action taken. There is no reason, I would submit, to anticipate that the British Transport Commission would behave with any less sense of responsibility with the freedom which a Maximum Charging Scheme, properly devised, allows them than do the providers of coal, or oil, or, indeed, gas or electricity.

The Commission, I would submit, have in this respect a good record. They were given by this Tribunal considerable headroom as regards freight charges, and I am not aware that there has been any complaint of an oppressive use of those charges. There is just as little reason to suppose there will be complaints of oppression in the use of the freedom which they seek in passenger charges. In point of fact, as has been mentioned already at this Inquiry, British Railways have had unused charging power on their ordinary fares between the 1st January, 1953, when the first of the Schemes applied the maximum of 2d. a mile, down to the autumn of 1957. Between those dates the fare was not 2d. a mile, it was something less, and when we find that unused charging power for so many years, in my submission it is a good index of the fact that the Commission behave with a sense of responsibility and do not use powers just because they are given.

I would assure the Objectors that the maxima for which this Application asks will not be used harshly or oppressively, and I would remind them that, in addition to the restraint of the maxima which this Court imposes, there are, in addition also to the internal restraints of a due realisation of the place of the Commission in the national economy, these very real restraints that public opinion can make itself felt in Parliament, that there is a Minister who watches these matters, that, coming closer to this Tribunal, the Minister can, if he feels that something is not to his liking, order a review at any time by this Tribunal of the operation of the Charges Scheme, and, after a lapse of 12 months, the Objectors themselves can ventilate any matter, again in this Tribunal, by the process of asking for a downward alteration in the maximum. These are checks enough. Those who heard the Commission's case will, I am sure, appreciate that the Commission feel that, even if there were no price control, they would behave with restraint and a due sense of responsibility. We do not complain at all of the fact that Parliament has thought right to give to this Tribunal the difficult task of setting maxima, but we do seek to say to the Objectors who come here and express fears that those fears are groundless.

Now may I deal with the case for British Railways outside London? This is a case which seeks to raise the

maximum fare for ordinary journeys, single or return, to 3d. a mile, and it seeks to raise season tickets to the level indicated in the Application. Those are the maxima. The difference between the present charges and those maxima has been called the headroom which is sought, and I do not propose to rehearse what has been said about the use the Commission will make of the headroom: It is to be a commercial use, a use according to judgment and seeking out the market, not a general increase, but an increase when and where desirable in order to improve the net revenue position of British Railways.

To that case there has not been a great deal of opposition. Some of it has been based, apparently, on the view that the maxima sought will virtually become the actual. I need say no more about that; that is not the Commission's case. Time and again, through an examination of the case put forward by the Commission, one comes across examples of the modesty of this Application. This is part and parcel, really, of the view I was propounding that there is no enhancement with a view to bargaining in this case. If what the Commission have asked for errs from what they might properly be given, in my submission it errs in favour of the Objectors. There are many instances of that, and the 3d. a mile, in my submission, is the first and one of the most striking instances of the modesty of this Application. I would remind the Tribunal that as long ago as 1928 a maximum was fixed by the Tribunal's forerunners at 1jd. a mile; that is one-half of what is now sought. In what other commodity or service has the charge per unit increased by no more than 100 per cent. in the last 30 years? One is hard put to it to think of any single example.

Then there is the fact, which is so often forgotten, that down to the year 1952 the maximum was 2-44d. per mile. It was reduced by the Tribunal in the course of the 1951 Inquiry, and it was reduced because at that time the old 1947 Transport Act was solely the authority, and the Tribunal could, in fact, enjoin actual fares if it had wished. It chose to use maximum fares, but the spirit behind the maximum in those days was very different from what I suggest must be the spirit behind the maximum in these days. The maximum then bore down upon the actual, the maximum now should not. The 2-44d. per mile which was in force up to that time was a fare widely used at this rate. There was, of course, the cheaper fare which anyone taking a return journey above a certain minimum distance enjoyed, the monthly return ticket, but there was a good deal of value in the revenue from the single ticket and the longer than monthly return; something of the order of £8½m. worth of traffic travelled at those higher rates. I wonder whether a man who goes today to Euston and takes a ticket to Manchester, which costs him 30s. 8d., ever pauses to reflect that if he had bought that single ticket back in 1951 it would have cost him 38s. 3d? It is a remarkable example of a decrease which is, perhaps, conveniently forgotten by many of those who object to these proceedings.

But the case for the 3d. need not rest on such considerations. It is proved, in my submission amply proved, by doing no more than looking at the graph which is Exhibit RHW 12 in this case at page 32 of the transcript. That, you recollect, is a chart showing the level of fares equated in terms of the real value of money taken at the 1948 parity, and one sees that, in terms of real money, what is being asked for as a maximum now is, in fact, almost precisely, in terms of real money, that which was the monthly return rate before the War, in 1938. The maximum before the War was nearly 50 per cent. above the 3d. for which we are now asking in terms of real money. The decline in the value of money, which is the other half of inflation, the reverse of the inflationary coin, must be reflected, of course, in prices to a greater or less degree, and when one finds that we are seeking now charging powers which, in terms of real money, are so modest that they are only two-thirds of the maximum before the War, then, in my submission, there can be no doubt whatever that, indeed, more than 3d. would have been justified as a maximum, bearing in mind what Sir Reginald Wilson said, that it is a true maximum we seek outside London, something not to be used except to give flexibility in cases where those who manage the affairs of the Railways feel that a rise above the present rate would be of financial advantage.



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[Continued]

What is said in objection to this proposed maximum? The United Commercial Travellers' Association were heard by you in opposition. They complained, I think I can classify it, of two matters: (1) Hardship, and (2) that the new fare would drive their members to road travel. Well, Sir, hardship by itself I do not think I need spend much time upon; it has been much debated in the past in this Tribunal, and it has been the subject of a pronouncement, which I take to be authoritative, in the Tribunal's Memorandum of 1953. Hardship, unless it is reflected in yield, unless it is reflected commercially, is not a matter which it is the function of the travelling public to relieve. I hope that is not a heartless view. Everyone has sympathy for people who have small incomes or whose margin is not great, but it has all been said before, and I will not go on saying it again, that the relief of that kind of hardship is not a matter for the travelling public.

As for driving the public off rail and on to the road, that is, of course, just the matter which those who have to fix the actual charges within the umbrella of the 3d. will have to consider; and if they think that the effect of increasing a given fare will be to drive off substantial traffic, then, of course, they will not increase it. They are the people best situated, I should submit, to decide whether or not there is going to be an adverse result from an increase in a fare, and if it is adverse, of course they will not employ it. I do not think there is any more I need say about that objection.

Apart from that, there is the Objection—at which I must look in rather more detail—propounded by my learned friend Mr. MacLaren on behalf of the County Councils outside the London Area. His first complaint, as I understand it, is that it is contrary to the practice in these Inquiries that a case should be presented without forward estimates of revenue and of yield from increases. Well, Sir, that fact to which he calls attention is the reflection of the difference between this Sitting and those which have preceded it, a difference which I endeavoured to adumbrate when I opened this case last December; that is a difference between a true Maximum Scheme, which this is, and an actual Scheme, which the previous Schemes were. It is not without precedent that there should be a Scheme put forward without being justified in terms of pounds, shillings and pence by forward estimates of traffic and yields because, as you, of course, know, the Merchandise Charges Scheme was just such a Scheme, and this—as, indeed, I endeavoured to say last December—endeavours to do for passenger traffic what that Scheme did for freight traffic.

He says, in support of that argument, that the provincial bus companies are required to submit estimates to the Traffic Commissioners. How much assistance you derive from the practice in other Tribunals I do not know; but the parallel of the provincial bus companies is not with British Railways, it is with London Transport, because the provincial bus companies in their own areas are like London Transport in London, virtual monopolies of public transport by road. This is a point, you recollect, which Sir Reginald Wilson made. At every point outside London the railways, both local and long distance, are subject to road competition both by public road services, stage carriage for short distance and express carriage for longer, and, of course, by private transport; but within London there is no such competition with public competitive transport nor is there virtually in the Provinces, because the provincial bus companies take the greater part of their revenue—what the percentage is I would not know; I should think it is of the order of 90 per cent. more or less—from their stage carriage services. Their long-distance coach services may be in competition with railways over practically all their operations, but their backbone, the great majority of their services, are the stage services, and there is no competition with their stage services except between those pairs of points which happen to have railway stations with a railway service.

Every one of these pairs of points where the railway operates has in general, as we all know from our knowledge of the countryside, a competing bus service; no one has come here to say: "You cannot get from A to B except by train", but there are thousands and thousands of points where you can only get from A to B by stage service operated by a provincial bus company if you have to use public transport. So the position there is similar

to the case in London, but in London we have had the most detailed estimates, and in my submission, Sir, there was nothing in that point.

Next my learned friend Mr. MacLaren says that there should be solid financial grounds to justify an increase in revenue. An increase in revenue is hoped to result from such selective increases as it has emerged the railways are able to make within the new ceiling; but I would ask. What financial grounds does Mr. MacLaren expect? We know the size of the deficit; we know the impossibility of bridging it at the moment—how much deficit does he want before he will concede that revenues ought to be increased if possible?

The evidence is to be found at page 52, Question 158, where Mr. Winchester said that the passenger trains on British Railways are meeting their specific costs and contributing £20m. towards the joint costs which they share with merchandise trains; those joint costs are £170m., which means that passenger trains contribute less than one-eighth of the joint costs. Yet on any estimation of gross receipts or the like, they provide one-third of the use of the materials which form the joint costs. For a one-third use, they make a one-eighth contribution, so they are far from paying their way, and their revenue ought to be increased if possible.

As one knows from the exchange of Correspondence to which I referred in opening, the deficit on British Railways is of the order of £85m., and if the joint costs are £170m. and the deficit is exactly half that, it follows that with passengers contributing £20m., merchandise trains are contributing £65m., so that therefore passengers and merchandise are in a rough parity at the moment, as Mr. MacLaren says—one-third to two-thirds. But while there is this enormous gap, with a deficit of £85m., both passengers and freight must clearly make all the contribution the managers can get from them, and in my submission the fact that freight can make no more than such a rough calculation as Mr. MacLaren seeks to make is no ground for saying that passengers ought not to make more contribution if they can. It is like the old argument which fortunately we have not heard this time on behalf of London: "British Railways in their provincial operations have a deficit; please can't we have a deficit in London?" It was not put exactly like that, but it has been put in words which can be translated like that in the past.

Then Mr. MacLaren goes on to contend that he was not given certain detailed information for which his clients had asked. You will recollect what happened, Sir; he put before you the exchange of letters, but he did not follow it up by cross-examining the witnesses on those matters or by asking the Tribunal to order the production of that information. In those circumstances, therefore, one can only infer that he preferred to have the grievance than the information, and in my submission there is nothing in that point.

Finally he suggests that taking each of the suggested possible uses of headroom, there should be a case made out for each of them and apparently specific powers given by the Tribunal in respect of each. He is saying, if I understand him rightly, that if you want to charge more for singles than returns, you must have permission from the Tribunal coupled with a maximum bearing down upon the actual which entitles you to do that, and if you want to charge more for a specific line because it is a non-paying or a more expensive line, you have to have special powers to charge for that.

(President): Yes, but I think we have understood Mr. MacLaren's argument on this part of the case rather differently. I understood him to say that to increase the ordinary from 2d. to 3d. is a striking step, and before it is taken you ought to show with some measure of statistics what good it is going to be to you; and although you have suggested that there are various kinds of services where you might get a little money by charging more than 2d., you have not condescended to give any particulars of these mere suggestions are not enough to warrant what, after all, is mathematically a striking increase from 2d. to 3d. That is what I understood him to say, and he added to that that if there be specific kinds of services which would warrant an increased charge per mile, you can get that by taking a general power under your Ninth or Eleventh Schedule—I forget which it was.

(Mr. Fay): Yes, Sir; I think that emerged from his arguments, but I have dealt with them, have I not, in

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[Continued]

part, where he points out that the increase is of a large size; I am saying that it is not large when one looks back and compares the maximum fares asked for to-day with the maximum fare in the past.

(President): Yes, but there is no general law of nature that we ought to double the 1938 fares; there must be a case of some sort.

(Mr. Fay): It cannot be unreasonable to have the maximum following the true value of money. If that were so, we would have asked for 4d., I think, not 3d., and that is what I call the measure of the modesty of this Application.

But on the other half, emerging from what you, Sir, have just said, the question of the evidence in support of the whole object with which the maximum is sought, is that the Commission could not be bound in any given case to pursue any given course of conduct, but that within the maximum they shall be free, and free to exercise a commercial judgment, tempered as I have said in my initial remarks, with a sense of responsibility, and when they have the maximum and know what their powers are—and not until then—they will be able to decide what specific use at any given moment is to be proposed and made of the maximum. That is inherent in this approach to freedom within the maximum, that one cannot cognoscitate just what is going to be done; one can give indications, and we have given indications, but we do not tie ourselves down to follow any single one of those indications. One may think, perhaps, that some of them may be followed, but there is no attempt by the Commission to pledge themselves to follow one or other of those courses, and they may well have many other courses to follow to make use of the freedom. That is the same approach as was made by the Commission to charge for merchandise, which is an even more considerable part of their business by rail than passengers.

(President): Yes, but I do not think we shall gain very much by referring to that; the approach was quite different, was it not?

(Mr. Fay): It was a costing approach.

(President): Yes, and no one could say that we had not sufficient figures for the merchandise costing approach.

(Mr. Fay): In this case I submit that you have sufficient figures in the figures of the deficit; in my submission there is no point in going into an elaborate costing if you are asking for something which is amply justified by the appalling present deficit, coupled with the fact that the passenger services contributed less than one-eighth when they ought to be contributing, on any rough proportion, one-third.

(President): Yes, but supposing we did not think that the possible uses of a 3d. maximum would really be likely to turn out, when the Commission examined it, to be of any importance at all, and supposing we were able to project, or throw our own imagination into, other uses of the 3d. maximum, there would not be any case for a 3d. maximum, simply because in 1938 it was a corresponding level in real value.

(Mr. Fay): Yes, Sir; with all respect, with a comparison of a true maximum there would be a complete case. It depends upon what view is formed of the function of a maximum; the view I have propounded is that it is there to prevent extortion, or a wholly unreasonable use of complete freedom.

(President): But the whole point is: Where? You say it is there, and on that argument, if it is merely to prevent extortion, it might be 2½d., 2½d., 2-6d., 2-8d., 3d., 4d., or anything.

(Mr. Fay): But how could one say that it would be an extortionate charge to charge something only two-thirds, in terms of real money, of what was charged as a maximum before the war? That is how I put that matter, Sir, and I refer to Sir Reginald Wilson's chart.

If this is the object of the maximum—and it is my contention that that is the sole object of the maximum in the circumstances of British Railways outside London, where, just as with freight, the real protection to the traveller and the real safeguard is competition—there, when one seeks to find a level at which to say you may go no further, one can do so quite satisfactorily by referring to the terms of the real value of money and equate the present proposal back to what has gone before; so

if it were right to charge 2½d. in effect in 1950, or 1½d. in 1928, in my submission, having regard to the value of money to the people in whose pockets it resides, there is every justification for my 3d., and indeed by parity of argument I could justify something of the order of 4½d.

That is the whole essence of the case, Sir; it is that there is no necessity to give concrete examples and lay before the Court actual plans, because in my submission what the 1953 Act provided was that there should be a ceiling at a level designed to prevent extortion, and within that ceiling there should be, as paragraph (d) of section 20, sub-section (2) expressly provides, no check upon the discretion of the Commission.

The Scheme is required, Sir, subject to the provisions of the Act, to secure that the charges to be made are to be left to the discretion of the Commission and that no conditions or limitations are imposed on that discretion. That is the central feature of that charging under your powers for approving charging schemes, and one can, in my submission, deduce from that, and from the Act as a whole, the view which indeed Sir Reginald Wilson has put forward before you, that the object of the Act was to provide for the freedom of charging for the railways. It was an Act to set the railways free from detailed restrictions, subject only to that which the Act itself provides, a maximum fixed at a level which does not impede the freedom within ordinary and reasonable ranges; and in my submission, Sir, the 3d. per mile, looked at in the light of the real value of money, cannot conceivably be said to be outweighed which is reasonable, and in my submission it is not necessary to give a specific instance of what use might be made of the power.

We have endeavoured to assist by showing the ways in which the railway managers' minds may work, but no attempt in the merchandise charges scheme was made to say just what was going to be done within the maximum; the maximum fixed there was in relation to the cost of a particular carriage in adverse, though not extremely adverse, circumstances, and it proposed a ceiling with a very considerable margin above the original charges. As I say, it has not been misused, but no attempt was made, and no Objector asked, even though the Inquiry lasted a good deal longer than this has lasted, for specific examples of what was going to be done. In my submission, Sir, that is the climate in which this particular part of the Application should be dealt with.

I am emboldened to refer to the spirit of the Transport Act, Sir, despite the fact that I know your reaction to a reference to some interpretation described as the spirit to be put upon an Act is not a favourable one. I do so, because it so happens that I can now quote authority for looking at the spirit of an Act when a Tribunal is performing the function of administering public policy. Of course, Sir, your task is to interpret the law and to reach a decision in accordance with what is thought right, in the public interest. A Court's task ordinarily is merely to find facts, but there is one matter in which the Courts of law day by day do administer public policy, and that is within the law in sentencing criminals.

It so happens that there is a reported case this year on how one can look at an Act, giving one power to sentence criminals, administering public policy in that function. I refer to the case of *The Queen against Evans*, which is reported in 1958 Weekly Law Reports, page 26; it was a case where a prisoner was convicted on two counts, and the Court sentenced him to imprisonment on one count and put him on probation on the other, the object being that after he had been punished by his imprisonment, he should have a form of after-care which the probation service would provide.

There was nothing in the Criminal Justice Act, under which that course was taken, to prevent it—it was within the powers of the Act—but on appeal to the Court of Criminal Appeal the present Lord Chief Justice, having said that strictly speaking the Act permitted this course to be taken, went on to say: "Be that as it may, it appears to this court that there are no express words which prevent these two orders being made at one and the same time. But although that may well be so, the court is clearly of opinion that the making of a probation order in such circumstances is contrary to the spirit and intention of the Act".



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[Continued]

So the Lord Chief Justice, in administering the public policy part of the jurisdiction of the Court, was allowing an appeal on the ground that the Act, although it had not been literally disobeyed, and although its powers had been lawfully used, nevertheless had been contravened in spirit, and I derive some encouragement from that decision in submitting to you that one must look at the Transport Act, 1953, and see what its general intention and spirit is in considering how to apply public policy in reaching a decision upon an Application such as this.

(President): You will find a lot of spirits, although not a complete unity of spirits, if you look at the Act of 1953, Mr. Fay.

(Mr. Fay): It may be that the spirits are mixed, but in my submission, Sir, they are of sufficient strength to assist me in this matter.

That, I think, is all I have to say about the ordinary fares for outside London, and I now pass to the season ticket scales, retained in the proposal as you know, Sir, but increased.

You have before you the graphs of the discounts which they represent as compared with the old and new ordinary fare, and you may think that the most informative of the graphs is probably that which appears on page 123 of the transcript, RHW 15. I would like to look at that, if I may, in considering the season ticket rates.

This is intended to be a simple graph setting out the price of a single journey at the existing and proposed maximum ordinary fares—those are the two straight lines—and at the existing and proposed season ticket rates, assuming monthly seasons are 10 single journeys a week for the basis of comparison.

This graph shows very clearly, in my submission, the remarkable discount which season tickets offer even at minimum use, because ten single journeys a week must be minimum use for a season ticket. If one looks, for example, at a 20-mile journey, one sees that the ordinary fare of 2d., naturally enough produces 40d. for a 20-mile journey at present, and the proposed fare produces 60d. The season ticket, for that journey at the existing price is about 23d., perhaps, on this scale and the proposed fare is about 30d.—about half-price, in other words.

Those, Sir, are considerable concessions, and they highlight the fact, which is to be put in the forefront of the consideration of season tickets, in my submission, that they are a concessionary fare. I say that, Sir, because season tickets have been with us so long that people who have them are inclined to think that they have something by inalienable right, and that they are not enjoying any kind of concession.

The approach to this class of fare is not altogether without authority, because in the field of the provincial bus transport there has been a pronouncement by the Minister upon the approach which should be taken to concessionary fares, and, in fact, season ticket concessionary fares. This appears in the decision of the Minister on the second *Western Welsh* Appeal which was cited by Mr. Winchester when he gave evidence on Page 58, at Question 262. I refer to that because it gives the Ministerial reference if anyone wishes to look at the decision.

(President): Are they published now?

(Mr. Fay): They are available at the Ministry, as I understand it, to persons who show good cause for wishing to see them, or to obtain copies.

(President): It is going to be awful if we have got to listen to decisions of the Court of Criminal Appeal and then hurry to decisions of any Minister on any topic.

(Mr. Fay): I hope it is not too awful, Sir, but I do not think I am going to cite any more cases from the Court of Criminal Appeal; anyway, I prefer to call it a case decided by the Lord Chief Justice of England!

In this case, which Mr. Winchester referred to because it re-affirmed the Minister's previous decision on replacement reserve, there is also a reference by the Minister to the principles to be adopted when an increase of fares was sought by a Provincial Bus Company, and a higher increase is sought from season tickets than from other fares.

The Minister, on the second page of his decision, said this: "He is of the opinion that the principle, that when

additional revenue is required, concessionary fares should make the first contribution, is sound". I cite that not because it is binding in any way on this Tribunal, but as indicating that the approach which the Commission make to this problem at any rate has this to be said for it in point of reasonableness, that the Minister calls it a sound one. It cannot, in my submission, be thrown out of the window as something which should not be listened to. These are concessionary fares and it is right that they should be looked at narrowly in times of stringency.

Again, Sir, one could justify perhaps abolishing control, abolishing a maximum, for seasons, as indeed we propose abolishing any special maximum for early morning fares, but—and again I think the Commission will be given credit for reasonableness in this matter—they have not done so in point of history. These fares were not controlled at all before the 1922 Railways Act; they were then purely concessionary fares without any statutory control and they were, I think it is right to say, brought into the schedule of standing charges because since they were contract rates one could not say how much per mile mathematically was being charged, and one could not, therefore, say whether any particular person was being charged more, or less, than the standard rate.

So there had to be, under the rigid framework of that Act, a schedule for season ticket rates, and that is how they got into a state of being controlled by the forerunner of this Tribunal, and, Sir, as I say, we do not seek to abolish that control, but we do seek powers to charge rather more proportionately at lower mileages than at higher mileages.

There is very considerable discount being given, but, as my learned friend Mr. Grant has pointed out, the discount in terms of a five-day week does disappear at the lowest mileages. One need only look at Table RHW 15 to see the very substantial discounts which are still proposed, and even if the maximum season rate were charged in conjunction with the present 2d. rate, there would still be a substantial discount, as this table shows.

(President): Of course, the problem is, on that policy of reasonableness, the simultaneous abolition of early morning fares and the increase in the season ticket rate, is it not? That is where the shoe pinches.

(Mr. Fay): That is the abolition of the maximum, but it does not, of course, follow—and certainly not as regards British Railways outside London—that the withdrawal of that statutory restraint will mean either the abolition of the early morning ticket or the increase in the season ticket. The matter, within what I submit is a proper ceiling, is to be left to the commercial judgment of the Commission.

(President): We will correct it to the abolition of a right to an early morning fare coupled with the immediate possibility of an increase in the season ticket charge. That is the case which is presented.

(Mr. Fay): I am not sure that that is presented as the case outside London, Sir. It was a case presented by Mr. Grant within the London Area, but you will recollect, Sir, that it was brought out by Sir Reginald, and I think by Mr. Winchester, that in the provinces there are already available at all hours of the day returns at rates which are comparable with the existing early morning fares. There is really no problem of that kind in practice in the provinces unless for some reason, which I am sure you will fail to see, that the Commission takes it into its head to withdraw its cheap day returns. You know why they are there; they are there in order to secure some traffic by rail at short distances instead of its all going by bus. The cheap day returns are conditioned by the existing competing bus fares; there would be no traffic in the trains at all if they had to pay twice as much by train as they do by bus.

(Mr. MacLaren): I am sorry to interrupt; it is just a question of fact. My instructions may not be correct in this, but I understand there are parts of the country where these day returns are not available.

(President): I do not think Sir Reginald said they were available everywhere; in point of fact, I do not think he could say that.

(Mr. Fay): I do not think he did, Sir. No questions were asked of the witnesses about any particular areas

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where they were not available, otherwise enquiries could have been made about it. The London County Council did, before this Inquiry started, obtain a great deal of information from the Commission about areas where they were available; that information was supplied, but they did not make use of it or the leaflets and brochures giving details of cheap tickets in I think nearly all the big provincial centres, but I suppose it may be possible that there are some lines where there is no cheap day all day; I do not know.

It is upon season ticket rates that I am reminded that my learned friend Sir Milner Holland quoted from "The Times" of 1859. I have a quotation from "The Times" of 1959, which is perhaps rather more cogent to this Inquiry than one of such antiquity. My quotation—I am not sure if it is 1959; I think it is 11th December, 1958—is from a leading article of "The Times" of that day in the course of which that newspaper said this: "... if the railways are to press on with work which will give some reasonable early returns, and if they are to show thereby that their claims are sound, they must also be allowed to use their new freedom in charging." "The Times" seems to have imbibed the spirit of the Act, Sir!—"in order to attract the business they want and discourage the business for which rail is less suited, they must be able not merely to offer low rates but to impose high ones—and to refuse to carry goods or people at rates which do not pay. Unfortunately there is a tradition of Ministerial intervention to delay the second half of the process—the raising of charges. Some commuters, for example, are said to be still getting travel at one halfpenny a mile. No travel can be provided remuneratively at this rate and the beneficiaries should not be subsidised, whether for sentimental or electoral reasons. Without the rigorous application of the new rates policies—which cannot be painless—the railways cannot build up suitable traffics. The railways may also need to be more flexible".

That is a view which is not altogether in all respects agreed to by the Commission, but it is put forward by a responsible organ of opinion, and when it talks of a specific instance of unreasonably low rates, it is not without significance that it picks upon the season ticket, which produces rates as low, at longer distances, as 4d. a mile at present; and in my submission, Sir, for the same reason that "The Times" picked upon it, it must be picked upon by this Tribunal, and the Commission must be given power at any rate to increase it.

Oddly enough, Sir—perhaps it is not so odd—it is just the beneficiaries of these exceptionally low rates at longer distances who have come to this Tribunal to make their voices heard; I refer to the Objectors from Hastings and Herne Bay. Hastings is a distance of 81 miles from London, and Herne Bay is 68 miles, and one has only to look at the scale on Exhibit RHW 15 to see how low a rate one gets at distances of that kind.

I did give some figures, when I opened the case last December, and I will not repeat them; but the residents of these places are still going to get season ticket fares at a very considerable concession, even though the maximum is charged; but they say—this is typical, Sir—that they will have to pay more, and that people will leave Hastings and Herne Bay and move nearer London; but if those who are in charge of the commercial policy of the particular area—it is the Southern Region in this case—think that that is likely to be so in sufficient quantity, and if they think their revenue will thereby be decreased, they will decide according to that where to pitch the fare within a reasonable maximum.

(President): But what is bothering me about people leaving Herne Bay or Hastings or other delectable places such as that, is that there is apparently an assumption that those places will turn into deserts; but when A leaves Hastings, he will sell his house to B, and the case will have to be put as high as this, that the population of Hastings and Herne Bay, or at any rate that part of the population which comes up to London every day, would be gravely diminished.

(Mr. Fay): Yes, Sir; I think the same argument was made, this time within the London region, on behalf of Benfleet; it was said that the people cannot possibly pay a penny more. I pointed out, I think, to one of the representatives from that organisation that some of them lived considerably further along the line, namely at

Soushend, and they seem to be able to pay today rather more than Benfleet will be asked to pay in the future; and one cannot help but feel that these are simply facts in the natural feeling of anyone faced with an increase in price—he does not like it. Indeed, as "The Times" says, for anyone to have to pay another penny for anything is a painful process; but really it comes to no more than that they will anticipate having less in their pockets, having paid for essential travel, for the many marginal expenditures which are open to people today.

Perhaps I may be permitted this observation, that the representative of Herne Bay, who came and voiced the fears—he used the word "fears"—of what was going to happen, had perhaps the best reason for knowing that the railway could be trusted to behave reasonably, because Herne Bay is one of the few places which enjoy a very cheap rate, which is concessional in this sense, that it is well below the maximum season ticket rate, for the "red line" or non-intermediate season, and his fear is that this rapacious Commission is going to clamp down on that. But the Commission could have abolished the red line season ticket at any time since it was introduced, and it is still being enjoyed at Herne Bay in 1959.

While I am on season tickets, Sir, it is convenient to turn from outside to inside London, and deal with that type of ticket as it affects the London case as well.

Mr. Grant, on behalf of the Beckenham Corporation, made a number of comments upon the proposals in relation to the London area; he complained that no comparison had been made between the season ticket rates and the London scale of charges. It so happens that a rough comparison can very well be made from Exhibit RHW 15; the maximum is described as a maximum of 2d. a mile, and at longer distances the proposed maximum for London fares—the fares on the Tubes and buses and the day return on British Railways—is a fraction over 2d. a mile, so that for all practical purposes one can look at this graph and see the relationship between the 2d. line and increasing broadly the London Transport proposal for ordinary fares and the proposed maximum season ticket rate, one can see that there is still a concession.

My learned friend Mr. Grant went on to complain, as I think I have already mentioned, of the withdrawal of the concessional element on a 5-day week basis at the shorter distances. These cheap fares for a person's daily travel has the paradoxical result of providing for cheap travel at the expensive time—that is, the peak; and in my submission there cannot be any justification whatever for that course being enjoined upon British Railways London Lines, by fares which are too low.

The fallacy of Mr. Grant's argument on this point is shown, in my submission, by the fact that he goes on to complain that it is the rail travellers in the peak who are singled out for attack, and he says that there is no comparable attack on the travellers by bus. What is lacking from that argument is realisation of the fact that the bus travellers in the peak hours do not pay concessional fares; they have no season tickets and unless they are early morning travellers, they pay the ordinary fare which obtains throughout the day.

One of the advantages—perhaps a minor one—of the proposal as regards the short-distance season ticket rates in London is that at the shorter distances at which comparable journeys are made by bus, the weekly season ticket rate is brought into rough parity with what the bus passenger pays; that is to say, the same fare as the day return.

Before I pass from season tickets, Sir, I would like to make a further observation about the way in which those representing the Objectors have approached the question of the value of season tickets to those whom they represent. The calculation is always made on the basis of a person travelling once each way on five days a week. I am not complaining of that, because, of course, it is upon the basis of some of the comparisons we have made ourselves in tables in the past—one has to make some assumptions for the purpose of arriving at a discount, and the ordinary assumption is oneself a 5-day or a 6-day week; but when one is asking oneself what the value of a season ticket is to the holder, it must never be forgotten, in my submission, that what he gets is not ten single journeys for his weekly season; he gets a pass over a line.



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To take an example, which must be widespread, a man living in the western suburbs of London, who has to come up for his work to the West End, is able to use that pass to go to lunch, to go to business conferences, to take his wife up to a cinema in the evening, and on a Sunday to start off on any expedition he may care to take. These are not theoretical and idle considerations, Sir, because it so happens that I am able to establish that season tickets which on the 5-day week basis cost more than the comparable ordinary ticket by London Transport are in fact in popular demand.

(President): I am afraid I do not follow that sentence, Mr. Fay; you are able to establish what fact?

(Mr. Fay): The fact that persons take in very considerable numbers season tickets which cost them more—these are weekly season tickets, Sir—than ten single journey tickets would cost; in other words, either they are using it far more than five days a week for one journey each way, or else they are so appreciative of the facility of not having to book each time they go to the station, or both.

I showed the figures I am about to mention to you some time ago to Mr. Grant and to Mr. MacLaren; the figures are based upon a test which was taken on London Transport for the four weeks ending 1st December, 1956. I am dealing now only, for the sake of simplicity, with weekly season tickets; they are the ones which are chiefly concerned.

At that time in December, 1956, a season ticket, weekly, for anything up to and including six miles, cost more than ten single tickets—the five-day week double journey. In that test period it was found that the total number of weekly season ticket holders at all distances was 37,321 on London Transport. The number of weekly season ticket holders for mileages up to and including six was 9,633, and in terms of percentage, that is 26 per cent. of the total. So fractionally more than a quarter of all the weekly season ticket holders were, if only travelling one journey each way five days a week, actually losing money.

The inference, of course, is that they were not losing money and that they were appreciative of the facility of buying the pass and being able to use their season ticket whenever they wished to make a journey, going to and from work, at mid-day, in the evenings and at weekends; so it is quite unrealistic to say, therefore, that because the season ticket scale has been reduced so that there is more saving on the shorter distance than heretofore that therefore that is a matter which the public feel to be unjust. They may resent—as I say, I suppose everyone does—any increase of a penny on anything; but there is no unfairness on that facet of the case.

Now, may I turn, because I am still on specific classes of fares, to the early morning tickets, about which I have very little to say. They are, of course, another concession; they are not a concession originating for commercial reasons but for special reasons. They had their origin when Parliament said to the railway promoters: "We are giving you a valuable franchise and in return we expect you to relieve the problem of poverty". It was the good old Victorian approach of getting the other man to do the relief of the under-privileged.

They have lingered on down to today, but they are fast being swept away, except where controlled by the present Scheme. The withdrawal of early morning season tickets as a compulsory feature of passenger charging schemes is opposed, I think as a No. 1 priority, by nearly all the opponents of the Scheme.

(Mr. Poole): You used the words "early morning season tickets", Mr. Fay.

(Mr. Fay): I am sorry, Sir; that was a slip—I meant early morning fares.

Since it has been put as No. 1 priority for attention I have listened anxiously to what they have had to say about the social argument with regard to the fairness or unfairness of the later morning traveller—usually the white collar worker—subsidising in effect the early morning traveller, the factory worker, and what they have to say about the fact, which appears to be the case according to the evidence in this case, that the factory worker is in receipt, generally speaking, of a higher wage today than the office worker.

Not a word has been addressed to you on that argument on which the Commission base their case.

The opposition, as I understand it, is based on pure hardship; I do not propose to say anything more about pure hardship, but there is one matter about which I should say a word, and that is the suggestion by Mr. Hill that the early morning travellers will suffer a double blow because not only will they have their early morning ticket withdrawn but they will also have to pay the enhanced ordinary fare.

Put that way, that is perfectly true and so far as the Scheme is concerned a double blow is possible. But, Sir, in the future as in the past I hope you will accept that the Commission and London Transport in this instance also, will behave with reasonableness, and it is not to be anticipated that there will be a double blow of that nature. It is certainly not within the contemplation of London Transport in present circumstances that there should be increases all at one go which would have that effect.

You will recollect, Sir, that Mr. Harbour said that the Scheme would have to be introduced probably in stages and here are stages which certainly, as at present advised, they contemplate introducing. Indeed, Mr. Rippon emphasised the "double blow" aspect by going back to 1954—this is at page 384 of the transcript—and he found that comparing the then early morning single on a bus with the proposed ordinary single for a like distance, the increase was 425 per cent.

That, of course, is a wholly illusory comparison because it is based on the single. The single cannot be regarded by itself, because it is half the return journey and the return journey being made at the ordinary fare, if one takes that into calculation, it puts Mr. Rippon's percentage from 1954 perhaps, to 110 per cent., and if he goes back to 1950, when there were no early morning fares on buses in London except in isolated cases on the periphery, he would have found that the increase was 100 per cent.

I am bound to say that I feel some astonishment that the Objectors oppose the proposed withdrawal. I do not know how Local Government officials test public opinion for the purpose of arriving at their priorities; they do not call members of the public as witnesses to tell you what they think—in this case there was in fact no one called either by Middlesex or by London, although some representative members of the travelling public were called; they were those who came from Benfleet and District and you will recollect what one of them said. That was the gentleman from Rayleigh; when I asked him about his views as a responsible member of the Local Authority, and as a traveller, upon this question of the early morning fare—this is the evidence of Mr. Collins, an Urban District Councillor of Rayleigh, and I also noted that he said he was a member of the South Essex Traffic Advisory Committee, which I suppose is the body which has been separately represented and who asked you to retain early morning fares in the Scheme—he first of all agreed on Page 272, Question 4037 to 4049, that the manual or factory worker was in general more highly paid than the office worker; he agreed in general that the persons using the early morning tickets were the manual workers as opposed to the office workers and when I put the question to him, although he added a proviso about efficiency, he agreed that he could see no social reason for the distinction between the two in regard to their treatment in paying fares to get to and from work.

That is the only evidence which you have had in the witness-chair on this matter, Sir, and as I suspected when I put the question to this representative, he agreed with the viewpoint of the Commission. There is nothing in the way of evidence to set against that by the Objectors who say, for reasons which one may perhaps speculate about although not utter, that they wish to see as a No. 1 priority that the early morning fare be retained.

I suggest the Commission's case on that is simple: if they are to be retained outside London, as they may be, they should be put on their proper footing as discretionary fares granted for reasons which the Commission think are fit and proper reasons, and with due regard to tempering the wind to the shorn lamb. In London they should be withdrawn; in other words, London should follow the example of Edinburgh, Manchester and other

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large provincial cities where this relic of Victorian charity no longer subsists.

I do not think I have any more to say about those two classes of fares or about the case for British Railways outside London. Let me come to what has occupied the greater part of the time of your deliberations, namely, the financial case for London Transport, by which is judged the situation of the London Area as a whole.

The case for the Commission, as I am sure you need no reminding, starts with document PJ 11, from which one sees that in 1959, the present year, the Commission expect that they will have a working surplus of £5m. Perhaps I should not call it a working surplus; it is total net receipts before making a contribution to Central Charges, of £5m.

As you know, Sir, the case for the Commission is that the Commission needs not £5m. but £11m.; they need another £1m. in order to reach their Central Charges at the figure which they suggest is correct; that is £6m. They need £3m. for replacement reserve and £2m. for general reserve.

So therefore they need, not £5m. but £11m.; that is to say, they need another £6m. of revenue, and they put forward a Scheme with a yield on the present 1959 level of traffic, of £5.6m. That is £0.3m. less than they have said they should have, and I suggest that is yet another example of the modesty of this Application and of the fact that so far from there being any scope for giving anything away, the case has been understated.

Let me deal with the points which have been taken against me on this global financial case; as I understand them, they are four. It is said that the working surplus, or the net receipts, in future, will be more than £5m.; Sir Milner Holland said they ought to be £0.6m. more at least—

(President): In 1959?

(Mr. Fay): Yes, Sir, in this year.

They say that Central Charges ought not to be fixed at £6m., but either at £5.5m. or £5.4m. according to which Objector you take. They say that there should be no replacement reserve at all and they say that the general reserve should be small. Middlesex concedes that it should be £1m. and London, if I understand Mr. Hill rightly, concedes practically nothing in present circumstances—I think he is in favour of a small general reserve in favourable circumstances at a time which is rather like the Greek Kalends.

Let me deal with the question of the yield and whether one ought to expect that at the end of 1959 the total net receipts, Line 7, will come out at £5.6m. and not £5.0m. as we say. This is the argument which is familiar from past inquiries as trend. Mr. Harbour has told you that in his figures he has allowed £3.6m. for the effect of declining trend of traffic and for the aftermath of the strike.

The first observation I wish to make on that is that that is an exercise in judgment, and who is better qualified to exercise the judgment than the man in charge of the operations, assisted by, and consulting with, the others who are familiar with the travelling public?

Opposed to that judgment by the people at the centre, and with that knowledge, is Mr. Hill's statistical approach—his statistical tests—and he starts off with his documents SWH 1 and SWH 2, which are designed to show that the decline in trend from 1954 down to last year's budget was £0.6m. per annum.

I accept that figure, Sir, and I would remind the Tribunal that in 1954 Mr. Hill addressed his mind to precisely the same problem, and in that year the Commission's witnesses were forecasting a downward trend of £0.6m. per annum. Mr. Hill, however, was saying that there would be no downward trend at all to be anticipated. We are very grateful to Mr. Hill for his tables SWH 1 and SWH 2 which show, as we expected, that we were in fact right, and when in 1954 we forecast a declining trend of £0.6m., in point of fact that is what has eventuated.

The proof of that pudding, Sir, was in the eating, and, in my submission, that does entitle me to say, does it not, that if Mr. Hill's statistical tests applied in 1954 led him to a conclusion which was different from the judgment formed by those in a position to form judgments, and if

their judgment has been proved right by none other than Mr. Hill himself, there is some likelihood that their judgment may be right on this occasion—there is nothing to the contrary.

That is not the only pudding of which there is proof in the eating. Let me turn now to Exhibit BH 17a, the story of what has happened this year, which you will find at Page 121.

I think this is the stage at which I should give the figures for two more weeks to be put in their place. The first one my learned friends can wait for with bated breath; these are the figures for the week ending 1st March for which the budget forecast was £1,482,000. The actual receipts for that week were £1,482,000—it was in fact bang on budget, if I may be permitted to use that expression, and it follows that there is no entry in the deviation column.

I pause there to say that the week ending on Sunday 1st March included the weekend which I expect we all remember, when summer came at the end of February; it was an exceptional and indeed an extraordinarily good weekend and, as you know, traffics are responsive to good weather; and there it is, back went the traffic.

The cumulative figures for that week are as follows: Actual receipts, £12,919,000; deviation from Budget, minus £143,000, and in terms of percentage, minus 1.1.

Now I come to the next week, the week ending 8th March, for which the budget is £1,495,000. The receipts were £1,473,000, a deviation from budget of minus £22,000. The cumulative figures are: Actual receipts £14,392; deviation, minus £166,000; percentage minus, 1.1.

So we have now got the figures for ten weeks out of the 52, and we have deviated from budget by a percentage of 1.1.

As my learned friends will no doubt have anticipated, I draw your attention to those results in considering whether or not Mr. Harbour was wrong in the figure which he gave of declining traffic. We have had a great deal of discussion in the course of the Inquiry about fog, real and artificial, and about influenza. It is certainly not part of my case to deny that there has been fog—bad fog—this winter and it is no part of my case to deny that there has been an influenza epidemic; indeed it would be a bad outlook for London Transport's figures if there were not some such explanation of the serious decline from budget so far in the first ten weeks of this year.

(President): But there is always an influenza epidemic; there is one every year, is there not, Mr. Fay?

(Mr. Fay): Yes, Sir, but I cannot recall an Inquiry in which Counsel have dropped out in the way we have become accustomed to in this case.

(President): That may be the result of the Inquiry, but we were certainly discussing influenza and its effect on transport in 1957.

(Mr. Fay): Yes, Sir; we have had it before and in so far as it has happened in, I think it is, the three years down to 1957, it is reflected in the budget forecast, because the budget forecast is made up on the three-year average, excluding last year.

But this year it came at a time when, as my learned friends pointed out, there was some fog, and I am content to assume that this serious decline of 1.1 per cent., £166,000 up to now in the first ten weeks—is attributable to that cause. If it is not, then Mr. Harbour has underestimated the decline in trend and it will be, as I say, a bad lookout for London Transport if that is so.

But there it is; there is a considerable decline. I am not seeking to show that Mr. Harbour has under-estimated the decline in trend; I say that when he put that 1.1 per cent. down he did not know, as we know now, that there was to be more fog than usual and that there was to be influenza. So be it; let it be attributed to that, but my learned friends cannot take any comfort from this table unless they can say—and I do not understand them to have attempted to say—that the influenza and the fog were so serious that in point of fact they account for a much greater decline, and that if there had not been the influenza and the fog the figures would have been much more than budget. I have called attention to these phenomena and, in my submission, these phenomena are faithfully reflected in the minus figures in the percentage

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column, and this ten-week result shows, in my submission, that London Transport is, as it usually has been in the past, about right in the budget forecasts. If that is so, the argument on trend has gone, and I pass from it.

May I now come to the question of the amount of the Central Charges. The approach of the Commission to this topic lacks novelty, unlike the approach of some of the Objectors. It is the approach which they have put before this Tribunal before and with which the Tribunal found themselves in broad agreement in 1953; and it has been stated again in evidence by Mr. Winchester and Mr. James how the approach has been made. Indeed, Sir, I can find no better words to describe the approach than those which were used in the Tribunal's Memorandum of 1953, paragraph 17, although I do not propose to read them.

Against this approach and judgment, based on all the circumstances and considered against the background of tests, there are put in this Inquiry two formidable mathematical exercises—

(President): Before you go to mathematics, Mr. Fay, on which of the differing modes put forward by the Commission's witnesses are you going to stand?

(Mr. Fay): I am standing on the only mode which the Commission's witnesses have put forward, that of judgment.

(President): They supported the judgment by some mathematical considerations, did they not?

(Mr. Fay): They supported the judgment by various tests, just as Sir Reginald Wilson supported them in 1953 in the manner which was referred to in paragraph 17 of the Memorandum.

(President): Which of the mathematical tests are you going to recommend us to look at?

(Mr. Fay): I was looking at the moment at page 10 of the Memorandum where the Tribunal summarised Sir Reginald's approach as a matter for the exercise of financial and commercial judgment, and went on to say: "He said that in the exercise of this judgment regard should be had, *inter alia*, to such mathematical computations as could reasonably be said to throw any light on the problem". Well, Sir, we have done a variety of mathematical calculations, and so have the Objectors, and I would say of the Objectors' calculations that they, like ours, throw light on the problem; but in that light, and in the last resort, the Commission arrive at the matter (and they have agreed it between the officials of the Commission on the one hand and the officials of London Transport on the other hand) at the sum of £6m. I think what you are inviting me to address my mind to is probably the question of whether, in making calculations on losses which have been made in the past, one should disregard British Railways.

(President): No, not only that. That is why I said which of the mathematical tests propounded by your witnesses do you desire us to take into account?

(Mr. Fay): All of them.

(President): If you say all of them, which of the tests do you desire us to take into account primarily?

(Mr. Fay): I had not addressed my mind to that question. I will take instructions on that.

(President): They lead to quite different results.

(Mr. Fay): They do indeed, as has been the case in the past. The results vary from a little over £5m. to something over £7m., if I recollect rightly. It is the variety of the results that assists one in saying, in my submission, that £6m. is about right as an exercise of judgment. It is the same process as has been gone through in the past. I feel, therefore, that I am on firm ground in saying that when this matter was exhaustively discussed by Sir Reginald in 1953 he was not saying he gave priority to any of the tests, he was not saying that he did more than derive assistance from the mathematical computations which were made. We stand firmly now where we stood then, that this is a matter for the exercise of informed judgment in the light of all the computations which may be made to test it. I am not at all frightened of the exercises made by the opposition when they are regarded as tests, because they do not come out very differently from the way in which our approach comes out.

May I now come on to deal with Mr. Lawson's approach?

(President): Do you attach any importance, from the point of view of your case, to your calculations about the accumulated deficit?

(Mr. Fay): Not a great deal, Sir, no.

(President): But some importance?

(Mr. Fay): That is really a matter which can only be of interest when one considers general reserve, is it not? Of course, it is of interest to the proponents of the specific approach, because they have to allow for the interest upon the deficit, and, therefore, they have to know exactly what it is.

(President): You say it is of interest, but, perhaps, not of great importance. I do not quite understand the distinction, but you say it is, at any rate, relevant?

(Mr. Fay): In assessing Central Charges to-day it is irrelevant, in my submission. It is relevant only when one makes a mathematical test of such a nature that one has to introduce the element of interest upon the deficit.

(President): But, presumably, calculations reaching to a result expressed as an accumulated deficit means that you have exercised skill and judgment in each of the ten years, does it not?

(Mr. Fay): I am not sure that one puts it as high as that. As from 1950 onwards, yes; as regards the earlier years, I would not like to saddle Mr. James with putting his hand on his heart and saying that.

(President): Mr. James in his evidence said that, in point of fact, he only took the decision of the Tribunal, which was the 1953-54 year, assumed that was infallible or, at any rate, irreformable, and merely took it back to 1948 without exercising any skill or judgment at all.

(Mr. Fay): I am glad you reminded me of that, Sir. That, I am sure, is the process. I would not attach any importance or reliability to those earlier figures, because the exercise, as an exercise of judgment, has not been done. If one is going to adopt the specific approach—and, as a matter of advocacy, the specific approach would suit me very nicely at the present moment—

(President): I am not very much interested in the advocacy of approaching it that way at the moment; but, of course, even for the years 1953 onwards the figures in PJ 14 do not agree with the figures in PJ 16, do they?

(Mr. Fay): No. PJ 16 is the pure mathematical specific approach as worked out by Mr. James. It is not the approach I am commending to the Tribunal, but if the approach is to be considered, then PJ 14 is the way in which we say it should be done. Of course, that does bring out a mathematical figure for the deficits for each of the years, reaching a total deficit at the end of 1957 of approximately £13m. as against the £15½m. which was the rough shot in PJ 16. I think when I opened this case I did not attach any great accuracy to the £15½m., but it is clear, in my submission, that the deficit is, at any rate, well over £10m.

(President): Have the Commission received any comments on this table from any of the Objectors?

(Mr. Fay): No, Sir. I am told that the representatives of Middlesex have asked for further information on two points which has been afforded to them, and that is the last which has been heard about it.

(Mr. Grant): We have considered it, Sir. Mr. Lawson is here if you want to hear any comments, because we are perfectly prepared to make them.

(President): I would prefer the comments on statistical tables put in the form of a Memorandum. I shall be glad to have them.

(Mr. Grant): You would like to have them?

(President): Yes; I should like to have any comments of anybody, provided they are not merely argumentative.

(Mr. Grant): If you like, Sir, we will put in a Memorandum.

(President): Very well.

(Mr. Fay): I am much obliged. Mr. James is always at your disposal if you wish to have any of these figures explained, of course, Sir.



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Returning to the deficit, it is of importance to know that there is a sizeable deficit in considering the question of general reserve. It is of importance to know the exact deficit if one is adopting the specific approach, but it is not of importance to know the exact deficit for the purposes of the approach which is made by the Commission, the approach of judgment and taking into consideration all the factors one way and another and arriving at a figure which is intended to be a figure taking one year with another.

May I now make my comments upon Mr. Lawson's approach, which is the pure milk of the specific approach, as I understand it. Its difference from the specific approach which Mr. James has now put before you is that Mr. Lawson has taken every conceivable credit to London which he can lay hands on and in the result he has diminished the deficit almost to vanishing point; he has got it down to a £2.9m. accumulated deficit at the end of 1957, with results which are most unfavourable to him when it comes to the question of how much revenue is required now and in the future by London Transport. But let me deal stage by stage with Mr. Lawson, if I may, though not, I hope, at too great length.

The credits which he has taken which on a proper view of the specific approach, in my submission, should not be taken are these: First of all, in line 4 on WHL 1, the letting of the surplus lands. The position there, I think, is now clear. He takes the revenue in the earlier years, £0.2m., and in the later years, £0.3m., and in his interest charges on British Transport Stock in line 12 he includes the interest attributable to the capital representing the surplus lands. If the surplus lands are to be taken out, then one has to take out the £0.3m. revenue in 1957, and one has to reduce his interest in line 12 by £0.1m.

(President): Why £0.1m.?

(Mr. Fay): £0.1m. is the amount of interest attributable to the Stock issued in respect of the book value of these particular assets.

(President): Which we do not know. We do not know the amount of Stock issued in respect of the book value of the £3.4m. assets.

(Mr. Fay): We know the proportion, Sir.

(President): We know the book value is £3.4m. in the London Passenger Transport Board's accounts, and, of course, we can calculate—although it is not a very easy calculation—what the total net book value of assets of the London Passenger Transport Board was, and we know how much Stock was issued, but it is really a hazardous guess.

(Mr. Fay): It is a little better than that, is it not, if one takes the book value? I understand Mr. Lawson to say you could do it, but what he was objecting to was that the value was not the kind of value he would have wished to see.

(President): Whatever Mr. Lawson said, we do not know, and we can never know and nobody will ever know, how much of the Transport Stock issued for the whole of the London Passenger Transport Board Stock represented the land in the London Passenger Transport Board's hands.

(Mr. Fay): No, we cannot know it for certain, we can only do a proportion sum.

(President): If you take the proportion you are quite right.

(Mr. Fay): I do not claim any merit for the figure myself because I have not worked it out, but that is what Mr. James said in evidence. If one takes out from this table the surplus lands, one has to remove the £0.3m. in 1957 in line 4 and remove the £0.1m. from the interest, and the result of that on the total figures is to take out of the total column the £2.6m., but you reduce the deduction by ten times £0.1m., that is £1m. So, in effect, it knocks £1.6m. off Mr. Lawson's accumulated deficit.

(President): It adds another £1.6m. on to Mr. Lawson's accumulated deficit, does it not?

(Mr. Fay): I am sorry, yes, of course it does.

I do not know whether you wish me to argue the question of the surplus lands. It is the dowry question which has been argued in the past and decided in a sense favourable to the Commission. I might, perhaps, say

this, that when I was cross-examining Mr. Lawson I pointed out to him that under the Electricity Act—with which he, for his part, was familiar—provision was expressly made that certain surplus funds described as investments should on vesting not go to the Area Boards, although they had a separate corporate existence, but should go to the coffers of the Central Authority, which is, in effect, what has happened in the British Transport Commission's case, because they say, and they have said all along, these surplus lands which have nothing to do with transport, are investments which we, the Commission, take for our general purposes. Mr. Lawson would not have it that that, although enjoined by the Act, was what happened, and you recollect that was the point at which I ventured to say that if his evidence was right it was in defiance of the Act of Parliament, at which my learned friend Mr. MacKenna became cross. I have now forgiven him, and, in point of fact, it is easy for me to forgive him because I looked at the Electricity Authority's first accounts, and if anyone takes the trouble to look carefully through them it is clear that the Act was, as one might suspect, obeyed and not, as Mr. Lawson indicated, disobeyed. The surplus investments of the subsidiary undertakings did not go to the Area Boards, they went to the Central Authority, and the Central Authority took into its Balance Sheet the investments and into its Revenue Account the interest. I have informed my learned friend Mr. Grant that I was going to make this point.

(President): I do not think it very much matters about the Electricity Board.

(Mr. Fay): No, Sir.

(President): I do not, for my part, require a further argument about the surplus lands. I see no reason for giving to what are called the London travellers the benefit of an income derived from lands which are not, in fact, used for giving them the services for which they are required to pay.

(Mr. Fay): That was, in fact, the decision of the Tribunal in 1953.

(President): Yes, but I ought to make it clear, as I have already said, that I think we should regard ourselves as entirely free to depart from that decision. I forget the elegant words that are used when Judges say they will not take any notice of what other Judges have said, but I think they are that it is of persuasive force only.

(Mr. Fay): Yes, indeed, I think that is well understood. At the same time, one always lives in the hope that processes which have led to a result on one occasion may lead to the same result on another occasion.

(President): Do not trouble any more about the surplus lands point.

(Mr. Fay): If you please; I have added £1.6m. on to the accumulated deficit in that way.

The next items are lines 5 and 6, which are credits which arise out of the maintenance equalisation operations. If I may take the second of them first, that is line 6, that is a plain writing back of the balance of true Equalisation Account from 1954 to 1957. You know the process which Mr. Lawson went through. It has not done him much good. It has given him £1m. on to his net deficit off the accumulated deficit, but it has come back and hit him when he gets on to his forecast for 1959, as we shall see in a moment. I do not want to say any more about that, except that it is better to leave it where we have it in the accounts rather than attempt to write it back. It all comes out in the wash eventually. I say in their favour that they have decreased the deficit at the expense of the Current Revenue Account, but when one gets back to the earlier years one gets into the state of affairs where, in my submission, it is quite inadmissible, on any view, to do any writing back, because from the years 1948 to 1953 there was a Maintenance Equalisation Account which (as I do not think Mr. Lawson appreciated when he started, but I hope he appreciated when I had finished cross-examining him) served a dual purpose. It was in part a true equalisation, just as was the case in the later set of years, but it was also a fund. Mr. Lawson appears to have thought it was a fund only, it was an accumulated fund to be run down, and, therefore, he wrote back only one-half of the account, he wrote back the excess of the standard chargeover expenditure, but he did not write back what appeared on the other side

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of the sheet. In our submission, the only possible way of dealing with a combined Equalisation Account and Deferred Maintenance Fund is to deal with it in the way in which we have dealt with it.

My learned friend Mr. MacKenna said: "Oh, well, if you have a hole in a roof in war-time and you set aside a sum of money to repair it when you are able to and later on you do repair it, the repair ought to come out of the sum of money you set aside and not out of your current revenue." Of course that is so, Sir, but the trouble in this case is that it is not as simple as that. That original fund, as I say, had two parts; it was partly fund to be run down and partly current equalisation. One can illustrate its effect by taking the example of painting a station: It may be if you paint a station after the War you are partly performing a normal maintenance operation, but you may also, at the same time, be using more paint and more labour because the station has got into a worse state of repair owing to a lack of maintenance in earlier years, and so you are partly in that same operation performing the act of current maintenance and partly performing the act of deferred maintenance, and the only sensible way of dealing with it, in my submission, is the way in which the Commission dealt with it at that stage. They carried into their fund their Deferred Maintenance Fund, and at the same time they said: "In order to take care of current maintenance we shall set up a standard, and anything above that standard will be deemed to be deferred maintenance", and, of course, it followed that the setting up of the standard for ordinary year-to-year maintenance meant that if the repairs fell short, in terms of expenditure, of that standard in any one year, then revenue had to pay into the fund on the normal equalisation basis. But you cannot disentangle it. If there had been a separate fund to be run down and if we had wrongly dealt with it, then Mr. Lawson could write it back; but when the fund is combined with a Current Equalisation Fund, then it is quite impossible to disentangle the amount of paint which was current maintenance and the amount of paint which is deferred maintenance when you repaint your station. That is the position, and that is why the matter was dealt with in the way in which it was. In my submission, whatever may be said for and against writing back the second tier of pure Equalisation Account from 1954 to 1957, it is quite impossible and inadmissible, on any view of it, to write back line 5. I ask you to say that when the Commission, supported by their auditors, set up an Equalisation Fund and deal with it in this way to spread and even out their expenditure taking one year with another, there is no sensible reason for disentangling it, although it is attractive, no doubt, to someone who wants to make a case that the deficit accumulated over the years is less if he finds that by writing back he makes it less.

(President): It all depends, so far as these are equalisation adjustments, at what year you like to strike, does it not?

(Mr. Fay): Yes. That is why I say it has come back and bitten Mr. Lawson when he gets down to 1959.

(President): But Mr. Lawson, surely, in the end said that he would have signed the accounts in the form in which they were signed and he was certain that the accountants who had signed them in the form in which they did sign them would also have signed accounts if they had been drawn in accordance with his Table WHL 1. It was a matter upon which accountants could quite properly take both views, and, indeed, I gathered that one might take one view one minute and another view another minute.

(Mr. Fay): Yes; it led one to wonder where accountants stand on these matters of what is a true and fair view of an undertaking, but there it is.

(President): The great consideration is to take the same action every year, is it not?

(Mr. Fay): Yes, or make a note if you alter it.

(President): If you are right on that, you add another £5.1m. to the deficit?

(Mr. Fay): Yes, I add on £5.1m., and that leaves only the £1m. Income Tax recovery, line 20.

(President): That is not all, is it?

(Mr. Fay): There are interest calculations which I will not attempt to go through.

(President): They are not very difficult, although they are rather tedious. I have done it for two years, but I was rather hoping that Middlesex would supply a table which was WHL 1 minus lines 5 and 6 and minus the surplus lands income, but with a reduction of the £0.1m. and the interest charges, leaving it to Middlesex to then arrive at the proper figure for line 18. It is rather a tedious affair.

(Mr. Fay): Yes, it means re-working WHL 2.

(President): Yes, and part of WHL 3.

(Mr. Fay): The result ought to come out at much the same level as Mr. James's PJ 16.

(President): Yes, except that Mr. James has credited to London Transport Revenue Account some amount which had not been credited in the previous statement by Mr. James. It is against himself.

(Mr. Fay): I dare say he understands that, but I am afraid I do not.

(President): If you take 1948 in PJ 16 and have before you PJ 14, you will see Mr. James's figure in PJ 14 for net receipts was £7.4m., and in PJ 16 he gives the net revenue at £7.44m., which would, to the nearest £100,000, be £7.4m., and then he adds in some miscellaneous receipts arising in column 11 at £7.52m. And you will find similar variations in other years.

(Mr. Fay): That is, of course, as you say, against him, because it increases the surplus funds. I will supply you with an explanation of that after the adjournment.

(President): That will be a little early, because I shall not wish to read it this afternoon. I have asked for so many more tables that everyone will be getting rather tired.

(Mr. Fay): I was hoping it might be possible for me to understand it, in which case I would give it to you verbally.

I think we had got as far as the last item, which is the share of the Income Tax attributable to London Transport losses. The greater your loss the more you earn from this windfall. I do not know whether you want that to be argued? In my submission, the complete answer, in the first place, without going into the merits, is the fact that, having got this money, which was, undoubtedly, when it came into the Commission, the Commission's money, the Commission did not choose to give it to London Transport or assign it in any way to London Transport; they put it by, they put it into a contingency fund said in the accounts to be used for special reasons only, and ultimately transferred it to the Maintenance Equalisation Fund. That is where it has gone; it has never been near London Transport.

(Mr. Poole): This one did not go to the Maintenance Equalisation Fund, did it?

(Mr. Fay): Yes, Sir. In the accounts for 1957, page 13, Note 23, you will see it has been transferred from the Contingency Fund to the Maintenance Equalisation Account because, says the note, "There will be exceptional charges to this account resulting from the replacement or displacement of certain assets."

(Mr. Poole): You are quite right.

(President): The actual account is V-14. Although dialectically you can say against Mr. Lawson: "Here you are certainly jumping away from the specific approach, there is no link between the wiping off of a possible claim and anything London Transport, still less the London Passenger Transport Board had", there is a certain amount of rough justice in the claim, is there not?

(Mr. Fay): I would not have thought so, with respect. Surely, the logic of attributing any of it except to the Commission as a whole is shown by the capricious result as regards London Transport according to the year in which the Commission chooses to recover the money and place it to Contingency Account. Mr. Lawson attached importance to the fact that it had gone into what he called a Revenue Account, but I do not think it is the view of the Commission that it is, in fact, a Revenue Account.

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(President): Did not Mr. Winchester say it could be treated as a revenue receipt? I was surprised by that, I must admit.

(Mr. Fay): I had not pursued that, and I will endeavour to do so. But according to the date on which it appears in the Commission's accounts, so London Transport gets more or less of it, according to Mr. Lawson, according to whether it happens to have a deficit or a surplus at the moment. In my submission, that is an answer to the rough-justice viewpoint. Of course, Mr. Lawson's approach via the branch accounts envisages a business which is all branches and no head office, as far as I can see. He would be prepared to construct a series of branch accounts for every one of the Commissions activities, leaving the Commission itself with nothing whatever.

(President): Leaving it with a banking account, I think.

(Mr. Fay): I am not sure. Of course, if he does that, then I suppose he must say, logically, that this windfall, if that is the right term for it, must be distributed amongst the branches. In my submission, if one is going to do justice along that line of reasoning—which I reject in its entirety—one should hand the money back to those who earned it, namely, the provincial bus companies.

(President): Of course, you will have to be careful about this Income Tax credit. If you increase the deficit in the years after 1948 and 1949 shown in Mr. Lawson's table, you will, on Mr. Lawson's argument, be entitling the London Transport Account to a bigger share of the windfall.

(Mr. Fay): Yes; I am not frightened of that, because I am hoping that you will say the windfall has nothing whatever to do with London Transport any more than the surplus lands.

(President): In point of fact, is it of very great importance? It is only of importance in so far as the accumulated deficit is of importance, is it not?

(Mr. Fay): Yes.

(President): And I rather gather you think that is of little importance.

(Mr. Fay): So long as it is established that there is a substantial deficit of £12m. or more, I do not know that the precise sum to the nearest million makes much difference.

(President): The other representative of the Home Counties, the homeliest of the Home Counties, London, put the accumulated deficit at £10.3m. In 1955 he had agreed that there was an accumulated deficit of the order of £12m., but subsequent calculations have reduced it.

(Mr. Fay): These mathematical approaches can be varied to suit any given set of circumstances.

(President): I confess that I have so little confidence in my own skill and judgment in these matters that I should rather like a mathematical approach of some kind as a guide, but it depends how tight the rope is when treating something as a guide.

(Mr. Fay): There, perhaps, Sir, is the advantage of PJ 16, because it is purely mathematical. It shows an accumulated deficit of £13m. and a Central Charge of £6.1m. for 1957.

(President): I suspect that Mr. Lawson's table, amended in the way I hope someone will amend it for me, will show an accumulated deficit of at least £11m. and probably over £12m., apart from the tax. If that were the figure, we should then have three mathematical figures within reasonable reach of one another. We would have Mr. Lawson's figure, on that assumption, or £11m. or £12m., Mr. James' £12m. or £13m., and Mr. Hill's £10.3m. I do not want to talk about Mr. Hill's detail at the moment, but we are within a range of possibilities there, are we not?

(Mr. Fay): Yes.

(President): What is disturbing about mathematical approaches is when one results in a figure, as Mr. Lawson's did, of £2.9m., another £12.89m., and another £10.3m.

(Mr. Fay): There it is, Sir. For the purposes of this Inquiry, which is concerned with revenue, it seems to me to have little importance except to emphasise by its size, if it is over £10m.—and whether it is much over or a little over matters little for the argument—the necessity for doing something about it by way of a general reserve, and it does not really matter, except to the man who comes to draw up the Balance Sheet of the future for London

Transport, what it is. It does not affect the question we are really on, which is what is the proper Central Charge at the moment.

(President): I confess that if I could think of a respectful way of avoiding the topic—that is, respectful to all those who dealt with it—I should like to avoid the topic of the accumulated deficit altogether, but I cannot think of any way of doing so at the moment.

(Mr. Fay): You did refer to Mr. Winchester as agreeing that £12m. Income Tax was appropriated to revenue purposes, but at page 215 of the transcript he said the opposite, as I understand it. He is being cross-examined by Mr. MacKenna, and at Question 3052 Mr. MacKenna says: "Is it not proper to regard a credit which corresponds to tax recovered in respect of loss as a contribution to revenue?—(A) As an off-set to previous charges for tax, you mean? (Q) As an off-set against the losses which made the recovery possible?—(A) I would regard that as quite improper."

(President): I do not think that is all Mr. Winchester had to say on this topic.

(Mr. Fay): Mr. Winchester asks me to refer you to Answer 3051, the previous answer.

(President): I will look at it after the adjournment.

(Adjourned for a short time.)

(President): You were going to point out to me some rewarding passage in Mr. Winchester's evidence.

(Mr. Fay): I thought I had done that. I do not think there is any more I wish to refer to.

(President): It was Question 3051, was it not?

(Mr. Fay): Yes, Sir; I do not think I need add anything to that.

Before I resume the main thread of my argument, may I refer to the alteration to the net revenue of London Transport shown by Mr. James on PJ 16, to which you referred before the adjournment. That arises out of the fact that in 1957 certain items of miscellaneous receipts which had previously been treated as income of the Commission were thereafter treated as income of London Transport. They were receipts from such enterprises as car parking at London Transport stations which amount to quite a small sum, as you see, although it turns the fraction occasionally. It is in the London Transport figures of net revenue in 1957 and that is why there is no entry in column 10 on PJ 16 for that year or for 1958; but in order to make the figures properly comparable, it has been thought right to add back in the previous years the amounts which, on the new basis of attributing to London Transport this additional revenue, would have accrued.

(President): Let me understand that. The 1948 to 1956 column 10 includes amounts which do not appear attributed in any way in the published Accounts to London Transport?

(Mr. Fay): That is so.

(President): Which one would not find in any of the sub-accounts as separate items?

(Mr. Fay): No; they are in the miscellaneous receipts account.

(President): They are part of the general miscellaneous receipts?

(Mr. Fay): Yes, and they are very small items, as you see, of which the largest is, I think, car-parking fees; that is car-parking at London Transport stations.

(President): But Mr. James has thought it right to give to London Transport revenue the benefits of this.

(Mr. Fay): On the specific approach that is right, and, of course, it is right to be consistent because the figure is in column 9 in 1957.

(President): On what account in 1957 does it appear?

(Mr. Fay): Miscellaneous receipts again.

(President): Is it attributed to London Transport?

(Mr. Fay): I fancy so, but I did not look at the actual account myself.

(President): It is in Table IV-1 now, but not allocated

(Mr. Fay): Only as miscellaneous receipts.



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(President): Of course, it is in IV-1, but then it is merely part of a general total, the main part of which is commercial advertising and letting.

(Mr. Fay): Yes.

(President): One finds credited to revenue in the London Transport Executive separate accounts sums described as "miscellaneous", but I gather there is something in IV-1 which does not appear in VI-5 and VI-6.

(Mr. Fay): I think it is in VI-5 this year. It is simply that these miscellaneous receipts have been enlarged slightly to include something which previously they did not embrace at all.

(President): VI-5 is very small, £17,000, is it not?

(Mr. Fay): That is buses and coaches.

(President): VI-6 is the railways, and that is £483,000.

(Mr. Fay): This would be largely a railway item. These small items in the previous years would be in Table IV-10.

(President): Miscellaneous receipts.

(Mr. Fay): Yes, miscellaneous receipts of the Commission, not of London Transport. I hope that mystery is cleared up. We are consistent and, to a slight degree, worse off so far as the presentation of this case is concerned.

(President): Consistent within PJ 16, but not within PJ 16 being consistent with PJ 14.

(Mr. Fay): I think that is a fair comment.

Now may I turn to Mr. Lawson's Table WHL 4, because it is here that the results of his labours are brought to the point at which they become relevant to the Inquiry and to the size of Central Charges, and I deal with his forecast for 1959, which starts off with net receipts (which are taken from PJ 11) of £5m. and as originally typed it brings out, at the bottom, a net deficit of £1m. which is to be compared with the net deficit of £1 shown in PJ 11 as the Commission's forecast for the same year. So as originally pronounced he is saying, in effect, that the Central Charges are £3m. less than the Commission say they are. Of course, it is at this stage that his dealing with the maintenance provision redounded to his disadvantage, because he was informed, and accepted, that there would be a payment out over and above the provision in 1959 of another £0.7m., and he accepts that and brings out a deficit at the bottom of the column of £1.2m. So he succeeded, by the way in which he has approached the matter, in showing that we are going to be worse off than we think we are in the year 1959.

But in all fairness I must go back to the original figure of £3m. deficit shown in his Exhibit because, of course, it is my submission that the maintenance provision should not be written back either way, and if I cannot claim the advantage on WHL 1, I cannot on WHL 4. That means we start off with his forecast of £3m. deficit or £5½m. equivalent on Central Charges.

(President): But more than that the other correction you suggest should be made is in the receipts side.

(Mr. Fay): Yes, I am coming to that, Sir.

If one then takes out surplus lands from this calculation, one takes out £0.3m. on the receipts side and £0.1m. on the expenses side, and, in other words, increases the deficit by the balance of £0.2m. So if surplus lands are inadmissible in this calculation, he brings out a deficit of £0.7m.

But he has also got in his calculation line 12, interest on surplus funds, £0.2m. Of course, the amount of surplus funds which there were in the body of London Transport at any given time depends upon the way in which one looks at the various matters which I went through before the adjournment on WHL 1, and if one excludes those credits which he has taken of a capital nature and thereby increases the deficit, as I suggest should be done, then his surplus funds diminish. He agreed with me, I think, that the effect of the working of the London Transport undertaking in 1958 would bring down the interest on surplus funds attributable to 1959 to £0.1m., but I think if one did the calculation one would find that the result of diminishing the surplus funds in the previous year in the way I suggest they

should be diminished, and in the way in which, no doubt, the Middlesex County Council's document for which you asked this morning will show, would be to reduce the surplus funds in line 12 to vanishing point in the year 1959.

(President): I do not like being interpreted as saying I asked for documents. I did say I should feel myself obliged if I were to receive a document in that form, but we have been supplied with so much that at this stage I would not like to ask for more.

(Mr. Fay): I am sorry if I missed the nuance. If my learned friends are unable to produce the document in response to your delicately phrased wish, we, in fact, have done it and could produce it ourselves at this moment; but perhaps it would be better if they did it.

(President): It is better that it should be produced as an agreed document. I anticipate that any document that reached me would be the result of collaboration, and if you have done your side of the collaboration already it will be easier for Middlesex to start on their side.

(Mr. Fay): I hope we shall be told they have checked our figures presently.

So I can take out the £0.2m. in line 12 for 1959, as I suggest, certainly thereafter, and that means that the net deficit in line 13 is now up to £0.9m. If on net receipts of £5m. the deficit is £0.9m., that means that the equivalent, on this presentation, of what we call the contribution to Central Charges is £5.9m., and that is only £100,000 different from the figure which we have pronounced. I say, therefore, that this approach of Mr. Lawson's has this year established that which we set out to prove. I do not know that I need go nearer than a difference of £0.1m. between us.

It is quite clear, from his approach, is it not, that whatever be the Central Charges—and they vary from year to year—in 1959 they are going to go on increasing, because it is quite clear on all hands that London Transport is going to go on borrowing money and going to go on needing to borrow money over and above the money which it can provide by self-financing even if it obtains by the middle of this year the full fruits of the scheme as pronounced.

(President): That is true on the specific approach but not necessarily true on the global approach.

(Mr. Fay): No, Sir. It is true on the specific approach and I pray it in aid as fully supporting the figure arrived at from the other approach of judgment by the Commission.

Let me turn at once to Mr. Hill's global approach. This is the net-book-value approach and it produces a result that, on Exhibit SWH 15, is £5.3m. for 1957. Mr. Hill has produced many different varieties of this approach. This is a refined form of a document which he put before the Tribunal in 1953 and which then produced different results from that which we see in this document for 1953 and 1954.

(President): Did you say in 1953? There was an Inquiry in 1950.

(Mr. Fay): Yes, indeed; but I had in mind the one in 1953, which I referred to when I cross-examined Mr. Hill. Perhaps that is by way of comment.

(President): 1950 and 1951 are really the same tables. The difficulty about his evidence in the 1951 Inquiry was that his table appeared in the transcript and not as a separate document, but it was in form an exact repetition of the document which he put in in 1950.

(Mr. Fay): Yes, Sir.

(President): It related solely to the interest charges and it is on page 391.

(Mr. Fay): I was thinking of the document which I put to Mr. Hill in cross-examination, which was the 1953 document, if I remember rightly, CCH 112a. This is a refinement of that approach, and, whereas in that year he produced a figure which differed considerably from the figure found by the Tribunal in their Memorandum, he has now added to it items which have the result that they bring out the Central Charges figure year by year at an amount which corresponds to what the Tribunal found. Starting from calculations which come to that

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figure, he then reflects in the subsequent years the alterations in invested capital shown by the amount of the fixed assets, to which he adds the stores and the accumulated surplus and from which he properly deducts the Maintenance Equalisation Account, and then he does the usual proportion sum and arrives at the conclusion which is found.

(President): Why have we, in the last two Inquiries, made things more difficult for lay mathematicians by taking the mean figures?

(Mr. Fay): I wish I knew, Sir.

(President): It makes it intolerably difficult. It has just been introduced in the last two Inquiries. We used to go happily along taking year by year, but now we always have to start with the first year not taking a mean figure, the second year we take half-way between the two, as to the last year everyone seems to be rather silent about how we arrive at it, and we cannot guess at the next year.

(Mr. Fay): It may be that in one of the Inquiries held about the middle of the year one was trying to find out what the position was.

(President): No, it is a statistician's quirk, and I have no doubts statistically it is quite justifiable.

(Mr. Fay): Speaking as one who does mathematics with difficulty, I would be glad to be relieved of adding two figures together and dividing them. But be that as it may, this Table, starting, as I say, with a figure which corresponds to what the Tribunal found, shows—and we make no quarrel with it—that the position on that basis, and solely reflecting the amount invested in assets of the kind given in this table, is much the same today; which is, in fact, what Mr. James said in his evidence-in-chief. I do not know that I need say much more about this table. It is another mathematical exercise which is capable, as Mr. Hill tells one, of being worked out, if one had sufficient information, to the last pound or shilling.

(President): He admitted to me that it was not.

(Mr. Fay): I thought he admitted to me that it was.

(President): He may have done that, but it is quite obvious it is not.

(Mr. Fay): He also said it was a different approach from that adopted by Mr. Lawson and he did not think, when I drove him to answer plainly, that one could adopt both at the same time, and then he went on, as I put to him, to back both horses. But I do not know that it matters that this calculation produced the figure he produced from my point of view, because if one accepts, as I submit one should, the approach of judgment, it is, no doubt, to be expected that some of the mathematical calculations will produce figures below the judgment figure just as others produce figures above it, and this one is below.

If any great significance attaches to it, then I would remind those who do attach importance to it that this scheme looks forward, not to 1959, or what is left of it when the Scheme comes into force, but to the next two years at least, and by the end of 1961 Mr. Hill has admitted that the Central Charges, according to his calculations, will be up to £6.1m. or £6.2m. He said that at Question 3764 on page 254.

But, of course, in adopting this global approach, Mr. Hill is really trying to get the best of both worlds, because he is taking net investment in his favour, he is taking a quasi specific approach when he takes out the British Railways' capital purposes' and deficits' advances and he makes a corresponding deduction from the total Central Charges, but he does not add back that which any specific approach would require him to add back, namely the increase in Central Charges to the Commission resulting from the re-financing of the London Electric Corporation Loan. That matter, of course, is faithfully reflected by Mr. Lawson, but this global approach, if properly done, ought to come to the same result as Mr. Lawson's. It starts from the other end, but it ought to come, if it is done with accuracy, to the same result.

(President): Why do you say Mr. Hill has not taken into account the re-financing—by which I mean borrowing

money in order to pay off—the Electric Corporation Loan?

(Mr. Fay): It is not reflected in his figures, Sir. The total is in the Central Charges, of course—

(President): Are you certain? Take SWH 4, line 1: are you quite certain that the interest charges there do not reflect an increased interest in 1955?

(Mr. Fay): Certainly they do, Sir; that is the Commission as a whole.

(President): But, then, on the global approach that is where the charge should appear, under increased expenditure, because he is applying his fixed assets test or capital invested test to divide up the total charges.

(Mr. Fay): That is clearly what he has done, and that means that the increase in re-financing this particular loan—which can be identified as being a London Transport loan—is shared out amongst all the activities of the Commission.

(President): That is what the global approach makes necessary, is it not?

(Mr. Fay): I think so, yes.

(President): Mr. Hill is being quite consistent.

(Mr. Fay): Yes, I am not saying he is not. I am not saying it is a defect in his approach, it is a result of his approach. If one regards it as appropriate to take into account all the circumstances, that is a circumstance which a person exercising judgment could take into account, and it is a circumstance which, I daresay, influenced the Commission in arriving at the figure of £6m. today. The £6m. is to be taken one year with another, and even on Mr. Hill's approach it is going to arise in a couple of years.

There, again, Sir, on these tables I have no more comments. In my submission, they show that the figure we have fixed upon is an appropriate figure to consider for a Scheme looking forward, starting in 1959 and expected to last for at least two years thereafter.

(President): But are you conceding that Mr. Hill, on this global approach, is right to remove from his totals in 1956 and 1957 the special account receipts?

(Mr. Fay): The practical answer to that is it does not make any difference to the Central Charges contribution point, on this calculation, whether he puts it in or takes it out.

(President): I agree, but I should like to know the answer as a matter of theory, because it arises on one of your global approach calculations.

(Mr. Fay): I am not prepared to advocate either approach. I think either is proper, it depends upon the view one takes of the effects of the 1957 Act. One can take a restricted view of it and say the Act is merely an Act to define certain borrowing powers which the Commission are to enjoy from the consolidated fund and, as a matter of machinery, to create a special account the whole object of which is to define the relief from the duty to pay the Commission's way taking one year with another. If one stops there, there is nothing in that interpretation of that Act which would lead one to make any alteration in the approach one takes to this kind of calculation. On the other hand, one may say, looking at this Act according to its spirit, if I may use the term, its effect is that Parliament is saying the finances of British Railways must, as it were, be put into cold storage, their finances are taken out of the duty to make both ends meet, no deficit is transferred to the special account and the borrowing powers are confined to British Railways, and the object of the Act, looking at it as a whole, is that British Railways finances shall be dealt with in one way and the finances of the Commission in another. If one adopts that view of what the Act is intended to convey, then it would be right to make the calculation on the "rump", so to speak, of the Commission after taking out British Railways. But I do not feel it necessary for me at this juncture is come down in favour of either view when I see that it makes no practical difference.

(President): Mr. Winchester, I think rather reluctantly, finally brought in one of the interest payments, did he not?

(Mr. Fay): Oh, yes.



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(President): And he left out the other. I think his reason for not taking the gross interest charges was that they were afraid where it would lead them in the coming years. Of course, it would lead them into rather funny country.

(Mr. Fay): Yes, which again shows, in my submission, that one must exercise judgment in a matter of this kind and that many of these purely mathematical calculations have their defects and cannot be adhered to year-in-year-out as a matter of simply mathematical logic.

(President): What it really came to, both on Mr. Hill's and on Mr. Winchester's presentation, is that you must have a hybrid specific and global, or global and specific, approach. When you come to 1956 and 1957 a new situation requires you, even though you are in general pursuing the global approach, to have regard to the particular matters caused by the operations of the new Act. That is, at that stage, going slightly "specific", is it not?

(Mr. Fay): Yes, for the purpose of the test and reflecting it as an exercise of judgment in one's final figure.

(President): I feel either enormous difficulty in applying my skill and judgment, or none. If I am told: "Do not bother about these rather complicated items in SWH 4 and 5, Mr. Lawson's Documents 1 to 7, Mr. Winchester's I do not know how many documents, and Mr. James's documents, just put those out of your mind for the moment and go and exercise your skill and judgment in the corner", in some moods I feel that is quite easy. But why, having arrived at that figure, should I then go into the next room and say: "Let us have a look at the tests" and then find that the tests lead me in different directions? Because then my disposition would be to close the door and say: "I must go back to the first room and look into the air"—as Mr. Lawson did at one stage. I do not think we really can regard these interesting mathematical exercises as any more than exercises. Mr. Lawson's was, I will not say a totally new approach because it represented the one Mr. MacKenzie put forward at the 1957 Inquiry.

(Mr. Fay): I think Mr. Lawson's was the expert carrying-through of that which had been adumbrated, but not, perhaps, quite so successfully in the past.

(President): It is the most specifically specific approach. There are stages, of course, where Mr. Lawson had to stay on to the field of globality, otherwise he would not have been able to put a figure in some of the columns.

(Mr. Fay): Yes. That is really why one is driven back to the view that only those in control of the Commission, who know and appreciate all the factors, can form a balanced judgment, which, no doubt, is small consolation to the Tribunal. But, perhaps, that does entitle me to say that some weight should be given to the mere fact that this figure has been propounded and accepted domestically by the Commission and London Transport.

(President): Of course, the odd thing is that if one were bold enough to say: "I don't really care about the accumulated deficit, except that there is one of some nature", the calculation of the Central Charges' contribution for 1960—which is the first year of which I take any notice—1961 and 1962 is, in point of fact, a matter on which there is singularly little dispute.

(Mr. Fay): There is singularly little dispute on the fact that my £6m. is a figure which cannot be disputed by the opposition.

I was going on to refer to this fact on the Central Charges' calculation, that my learned friend Mr. MacKenna referred more than once to an observation which fell from me in opening this case on page 3 of the transcript when I expressed the principle, as it has been expressed before, that the London Area, including London Transport, should pay its way, including the payment of a proper proportion of the Central Charges of the Commission, and my learned friend read that literally as committing myself and the Commission to a proposition, as I understood him, that one must see it out—and he sought to do it mathematically—precisely what those Central Charges are and not provide for a penny more at any time, otherwise one was departing from the principle of London Transport paying its way and was in fact, although he did not use the term, cross-subsidising some other part of the Commission. I would say in answer to that that what I said in that passage was that

London Transport should pay its proper share of Central Charges. I never committed the Commission, nor have they ever committed themselves, to any mathematical share of the Central Charges, and it has been made plain that the calculation is a fairly false one in the Commission's mind designed to take one year with another. Whether there is any cross-subsidisation of other activities is rather a question of what one means by "cross-subsidisation". If one does take a figure and  $k$  operates for, say, three years taking one year with another, it may be that in the first year it is excessive and in the third year it is insufficient. In the first year, in that event, the Executive would be cross-subsidising some other activities, and in the third year the reverse would be taking place. But within its limitations it is certainly not the intention of the Commission to ask for powers which would enable London Transport permanently to go on paying some other activities' proper share of Central Charges. I hope I have made the Commission's position clear on that point.

What we aim to provide under the name of a proper contribution to Central Charges is a fair charge, and these mathematical approaches, whether specific or global, are apt to be, in certain circumstances, unfair for a number of reasons. Mr. Lawson's approach suffers from this defect, that it never takes account of any cessation of business there may be. He has London Transport going on paying interest on the undertaking as it was at take-over, and if it abandons an activity and writes off the capital assets involved it makes no difference to his calculation. That, of course, happened in a small way when the trams were abandoned and written off, and it will happen again with the trolley-buses. That is one of the defects of his approach.

There is also this defect, that both approaches do not take any account of transactions between various organs of the Commission which have the result of increasing the profitability of one and decreasing the profitability of another. There was a good example of that in 1950 when assimilation was introduced. The effect of assimilation was to transfer a good deal of traffic from London Transport to British Railways, and you recollect that, although on that occasion London Transport asked for an increase, British Railways, in fact, asked for a net decrease in their charging powers. If one looks at the tables which were put in, AV 57 and the one which succeeded it at page 206 and following in the 1950 transcript, one sees that in the end London Lines of British Railways were asking for a net yield of minus £1m. very nearly. I do not know what the effect of that was on the profitability of those two concerns. The passengers were transferred, it may be that the profitability was not; but that there was an alteration in the balance between them is clear, and that alteration is not reflected at all in either of these mathematical approaches unless there is a physical transfer of assets. If there is, then, subject to the difficulties Mr. Lawson experienced in finding the capital value of the transferred assets, he can reflect it and, of course, Mr. Hill can reflect it anyway because he takes the net-book-value at the end of the year; but that is another defect of this purely mathematical approach.

The same defect is apparent if one considers what happens when the physical boundary of operations by London Transport buses is enlarged. I think you now have the complete collection of instruments of delegation of authority under which London Transport operates, and you will have seen that there were two occasions when their physical area of operation was enlarged, one in the Grays and Tilbury area, and the other at Crawley, no doubt connected with the New Town. I suppose that if such an alteration were made as between two commercial companies at arm's length, there would be some payment for goodwill, but there is no payment for goodwill necessarily in this case; and in order to make these mathematical approaches take account of that kind of transaction both Mr. Lawson and Mr. Hill would have to break down some notional figure for goodwill and transfer it from the other organ of the Commission concerned to London Transport. Of course, that is a matter to which they have not addressed themselves, they have not done it, and I doubt whether it could be done; and, in those circumstances, there is yet another matter with which neither mathematical approach can cope.



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But they are all matters, on the other hand, where an exercise of judgment, fortified, of course, by looking at all the mathematical computations, amongst others turnover and the numbers of persons employed, is able to form a view which will reflect those transfers.

(President): Of course, Mr. Lawson met that difficulty when he had to allow for the transfer of what he called the transferred assets at the beginning of 1948. He found a statement by Sir Reginald Wilson which he thought got him out of the difficulty, but, as at present advised, I think he put upon what Sir Reginald Wilson said a meaning which Sir Reginald Wilson did not intend his words to bear. Sir Reginald Wilson gave £10m. as being the value of the transferred assets, and Mr. Lawson, for his purpose, had to treat that statement as equivalent to a different statement, namely, that £10m. worth of Transport Stock ought to be debited to the new London Transport Executive Account, which may or may not be true.

(Mr. Fay): I think he accepted in the end that it should be £12m.

(President): I think, in fact, Mr. James has given us two figures. I think Mr. James, at one stage in his evidence, said he thought it was £18m., but later on he put it at £12.2m. in his statement.

(Mr. Fay): I think the £18m. may have been a figure which was a misapprehension when cross-examined. In PJ 14 Mr. James gave a figure of £12.2m. in Note No. 2.

(President): I do not suppose anyone will ever know; certainly no one will ever know how much Transport Stock was issued. There were three railway undertakings concerned, were there not?

(Mr. Fay): Yes, there were several. There were two joint lines.

(President): Nobody will ever know how much of the Stock issued to the shareholders in those two or three railways represented their part of the assets which were subsequently to be transferred to the Management of London Transport.

(Mr. Fay): Quite.

(President): I suppose somebody did, perhaps, at the time put a value on them, otherwise Sir Reginald Wilson would not have been able to say that, in round figures, their value was £10m.

(Mr. Fay): Someone has to exercise judgment upon the matter. I should have thought it was quite impossible to trace back the history of the Stock and find what Stock was issued when the line was first constructed, and how much was issued in respect of rolling-stock, if any, transferred at a later date, and so on. It would be quite an impossible task, and, therefore, it is a matter of judgment. But I do not think, again, that in practice there is anything between Mr. Lawson and Mr. James. I understood Mr. Lawson to accept that it was £12m. with which he was concerned. Of course, if the Commission were minded to defeat Mr. Lawson entirely, they could split London Transport into two organisations and two Executives, and I do not know how he would cope with that situation, because he would have to revalue in some way all the assets transferred to one or other of the two new Executives and allocate the interest, hitherto London Transport's interest, between them.

(President): I see Mr. James takes no notice of freight rebates debits which Mr. Hill resuscitated in the first three years. Do you attach any importance to that? Mr. Hill debited the account with £0.1m. in each of the first three years.

(Mr. Fay): I think it right to do so. Has not Mr. James dealt with that?

(President): I do not think so.

(Mr. Fay): Mr. James has informed me that he left left them out deliberately for the same reason that he put in these miscellaneous receipts which appear in column 10, namely, to have a consistent table on the same basis. Otherwise there would be the first three years on a different basis from those which followed. Of course, again, it is against his final figure.

(President): We have never known how much of the freight rebate payments—which are £3m.-odd in total—was to be allocated against London Transport. Mr. Hill has debited £0.1m. in each of the three years.

(Mr. Fay): I rather think it was debited in the papers put forward by the Commission in the earlier days.

Continuing with the matters with which the mathematical approaches cannot cope, the situation of the transfer of assets is, of course, going to happen again when the Amersham electrification is completed, as Mr. James indicated. As I understand it, the line out to Amersham and Chesham is to be London Transport, but the line beyond Amersham to Aylesbury will be British Railways, and presumably someone, for the purpose of Mr. Hill's calculation, will be able to decide how much value to attach to the assets which are transferred; but that is not much use by itself unless one can also evaluate the profitability. In point of fact, what is being transferred to British Railways is a serious loss-maker, so any calculation based on net-book-value, again, does not represent a fair apportionment or a fair basis upon which to apportion Central Charges. Although, as I said this morning, for advocacy purposes I would rather like myself to base my case on PJ 16, that is why the Commission must retain a free hand to deal with the position as it presents itself each time it has to consider the allocation of Central Charges.

But in this case, as I say, the position, surely, is that the figure of £6m. put forward, tested in the ways we have looked at, is found to be proper for 1959 and modest thereafter. I am not asking for this Scheme to have a sliding scale of Central Charges, but it is fairly clear, is it not, that the Central Charges—whatever they are fixed at, or thought of being fixed at—are going to mount year by year.

(President): We do not know in the least, do we, what your net working surplus is going to be?

(Mr. Fay): Well, Sir, I am going to address my mind to that question next. That is partly embraced under the question of what savings, if any, are to be attributable to the new capital expenditure, the point which Mr. Hill made; and I suppose the other influences upon the future net revenue position are the stability of prices and the stability of passengers. Of course, no one can look ahead and say with any confidence what is going to be the level of prices in three or four years' time, nor can they look ahead with any confidence and say the present level of traffic is going to be maintained; but I am content, for this purpose, in justifying this Scheme, to assume that after the end of 1959 there is no further decline in traffic and that after the end of 1959 there is no further increase in the expenses of the Commission. Those assumptions are, you might think, out of line with what any reasonable person might expect to happen and I make them deliberately so that it cannot be said against me that I am making an assumption in favour of the Commission.

It is that if there is a change in the net revenue position by reason of increases in prices or wages, or by reason of a decline in travel—a decline which in fact has been going on, as we know, since 1950—the position will be worse, but I am content to deal with it on the assumption that those levels remain the same.

(President): Let me understand quite clearly what you are meaning, Mr. Fay; do you mean that you are content to assume that in 1959, this year, 1960 and 1961, the gross receipts plus the commercial advertising and letting will produce a working surplus sufficient to cover the Central Charges at £6.0m.?

(Mr. Fay): No, Sir, I am founding myself on Exhibit PJ 11, and I am content to assume that the gross receipts at present charges will remain at the same level, although they will be increased by reason of the increases under the Scheme, and that the working expenses will remain the same, subject only to the variation I am about to discuss, direct savings to be excluded from the investment in the new capital. That point was raised by Mr. Hill, and I take that line against myself.

(President): I want to be clear about this. You have founded yourself on PJ 11, and you are assuming—you say against yourself—for 1960, one year. Which of the figures in PJ 11 would you accept as being likely to be true for 1960—line 7?

(Mr. Fay): No, Sir. If you are asking me the exact situation, of course the figure will be increased by such increases as would be made by this Scheme if approved.

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(President): Take it at present charges, then.

(Mr. Fay): What I would say is that line 7, total net receipts, will remain the same, subject to the variation in respect of savings and greater efficiency produced by the investment programme. In 1960 perhaps it will be very little—I was looking further forward in point of fact—but when it does accrue, offset by increases in depreciation; and it will be more convenient, I think, if I tackle that angle first and make it clear that looking forward—and the further forward one looks the more misty the picture gets—I am not asking the Tribunal to give anything for any further inflation, or increased costs on anything the Commission has to buy, nor am I assuming for this purpose a further fall in passenger traffic; I am content to proceed on the basis of 1959 and see what the position thereafter is, (a) by virtue of the investment programme, and (b) by reason of the net receipts which may be expected to be increased in consequence.

The way I put that is this: By the end of 1961 Mr. James has said that the consequence of the investment programme will be to increase depreciation and interest net by the sum of £1.7m.—that is Question 580!—and that is on the assumption given in his Table PJ 15, that he is able to finance the greater part of the capital programme out of the yield of this Scheme.

(President): Which page is that?

(Mr. Fay): It is on page 245 of the Tenth Day, Sir.

You will recollect that table, in which he deals with an investment programme of £37m. by the end of 1961—not the full figure to that date, as has since been explained—and he points out that the maximum amount which could be found from internal savings if this Scheme is to be implemented in full, from the middle of this year, which is an unlikely assumption, is £25½m.

I am sorry; that is a 3-year basis. On that basis he gets another £11½m., but the note at the bottom says this: "The figure of £15m. assumes only half of the replacement and general reserve provisions could be collected in 1959"—in other words, if you take £8.5m., being the annual internal savings available from self-financing and you multiply it by 2½ instead of by 3, you leave a balance to be covered by borrowing, of £15m.

(President): It is rather a mysterious table; the note suggests that somewhere in the earlier part of the table the figure of £15m. occurs—

(Mr. Fay): Yes, Sir, and indeed it does, but I am not sure that Mr. James expected it to become an exhibit. It was a calculation for which you asked and which was handed in, but it is a very valuable calculation to have as an exhibit, and that is what it produces.

(Mr. Poole): Mr. James also said that the £37m. would become £38m.—an approved £38m.

(Mr. Fay): Yes, Sir, but he has since told me that he was mistaken in that, and that £37m. is the proper figure. It is not, in point of fact, the same £37m.; there is a figure of £37m. approved now for spending, and there is another figure of £37m. which is in fact going to be spent in respect of these Schemes by the end of 1961.

(Mr. Poole): I see.

(Mr. Fay): But whichever it is, they are both capital, and they have both got to be financed. This is the figure at which I think one should look now in looking forward.

The future financial requirement at the end of 1961 is, therefore, increased depreciation, because the new assets are now depreciated at new historic cost, plus the interest at 5 per cent., which is the ruling rate, not likely to decrease, on the amount shown on this table at £15m. by the end of 1961, which has to be borrowed, and those two together come, as Mr. James said in answer to Question 580, to £17m. What is available, if this Scheme comes into force, to help meet that? In the first place there is a part of the replacement reserve because as you recollect, Mr. James said that as the new assets go into service and as they are depreciated at their new historic cost, so the historic cost replacement will rise and so, although not to the same extent, the necessity for the replacement reserve will follow.

(President): As long as costs stabilize themselves.

(Mr. Fay): Yes, Sir; I am assuming a cessation of inflation for the purpose of this exercise; I am assuming that against myself in order to see what happens.

If at the end of 1961 there is an increase in depreciation, part of the sum of £17m., how much of that is going to be met by revenue provided now, as we suggest, for replacement reserve, but then needed for that part of working expense which is depreciation at its new historic cost? Mr. James has given the answer to that at page 80, Question 695, at a figure which I have taken as £0.7m.; he said that it was between £0.5m. and £0.75m., and he thought it would be nearer to £0.75m. Depreciation, he said, would increase by £0.9m., but his replacement reserve would decrease by something up to £0.75m., the balance being accounted for, of course, by the element of enhancement and also by the element of the time expired assets.

So out of the replacement reserve, if as we expect and hope you give us sufficient revenue to provide for it, will come £0.7m. towards these increased costs of £1.7 interest and depreciation together. That leaves £1.0m. to find.

Unless someone can point to savings—net revenue savings—amounting to a sum of the order of £1.0m., they cannot take any joy out of the fact that there are going to be savings in consequence of the use of the new assets.

The evidence upon the savings to be expected is that which Sir Milner Holland endeavoured to summarise in the table which is now printed in the transcript at page 411, and perhaps I can refer to it at any rate for this purpose. It conveniently sets out some of the figures which Mr. James gave in evidence: in column 7 Mr. James said that he was expecting ultimately, after the end of 1963, that out of the first three items he would be getting savings of £0.5m.; and he also said that out of the Amersham improvement eventually he was expecting a saving, after paying depreciation and interest, of another £0.1m.

There is nothing like the necessary amount here to offset the increase in interest and depreciation which is going to accrue by the end of 1961, and those are the savings which are expected out of the £44m. worth of specified programmes of improvement completed by 1963.

They are not, as I mentioned at a later stage, the whole story, because if one is going to look as far forward as 1963, one has to add another £19m. to the capital expenditure; that is what is anticipated, in addition to the £44m. now in contemplation, will be spent by the end of 1963.

So if one turns back to Exhibit PJ 15 on page 345, one can do the very simple calculation of what the interest charges are likely to be on the amount which is to be invested by the end of 1963: Capital outlay £63.0m.; internal finance can be taken as five years at £34m., which is £17.5m., with the addition of an extra £2m., because there will be additional internal finance from depreciation at any rate in the last two years. Mr. James said that it would be up to £0.9m. additional depreciation by the end of 1961, and therefore for those two years one can take another £2.0m. for internal finance.

Then one takes, to find the amount attributed by the reserves, 4½ (years) times £52m., and that is £22½m.

Those figures which are the maximum possible from internal financing, assuming the Scheme is put into operation in the middle of this year—and again I say that is an unlikely possibility—produce an internal finance of £42m.; that leaves £21m. to be borrowed over that period, at 5 per cent., and that involves interest of £1.1m. So whatever the interest charges are today, they will be another £1.1m. by the end of 1963; and there is nothing like improvements or savings in sight of that character needed to meet that kind of increase together with the increase in the historic depreciation. I should say, more accurately perhaps, the balance of the increase in historic depreciation over and above what comes out of replacement reserve.

So the way I put it is that looking forward, one sees expenses both on interest and on historic costs depreciation mounting; one sees them mounting at a rate which cannot be overtaken by the figures we have given of possible savings, and the possible savings are, of course, likely to be deferred, not to come to fruition the moment the money is spent.



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[Continued]

(President): On this topic, Mr. Fay, you seem to prefer the mathematical approach and not the "skill and judgment" approach. It is the sort of approach which would almost drive me back into that silent skill and judgment realm.

(Mr. Fay): I am addressing myself not to Central Charges but to a view of what is likely to happen to the revenue account, and that must involve mathematics. I have made every assumption against myself and, in my submission, it produces this result, that the amount we have asked for is the bare minimum, and we have again been modest and again the further one looks forward the less adequate this Scheme is seen to be to meet the proper commitments.

(Mr. Poole): What you have done, if I understand you aright, is that you have taken out the capital expenditure as you foresee it up to 1964—

(Mr. Fay): Yes, Sir; Mr. James did it in Exhibit PJ 15 up to 1961 and I have done a like calculation up to 1964.

(Mr. Poole): Yes, and you have included the effect on depreciation and on borrowings and interest; it is first of all depreciation and interest, and a balance which is an interest on the balance which you have to borrow.

(Mr. Fay): Yes, assuming the maximum possible self-financing in consequence of the Scheme being approved in full.

(Mr. Poole): Thank you.

(Mr. Fay): My learned junior reminds me that we must be careful about these dates; 1964 means the beginning of 1964, but I have been talking of the end of 1963 only.

(Mr. Poole): Yes; I was mixing up 1944 and 1964—  
—I meant 1963.

(Mr. Fay): I do not know that I need try and construct a "PJ 11" for 1960; I am content, as I say, to point to the fact that the net position must worsen as the time goes on, and must worsen by reason of increased depreciation not being offset by savings, and paying no attention whatever to what we all suspect may well be the case, namely that prices will not remain for ever at today's level and passengers may not continue to travel at the same level as they do today.

(President): I still do not know what your answer to the question is. If we have to calculate what extra revenue you ought to be empowered to collect, we ought to know what your obligations are going to be for 1960 and 1961—I do not take any interest in 1959. How can we form an opinion on that point without forming an opinion as to how profitable or unprofitable the actual working of the line is going to be?

(Mr. Fay): I find it difficult to look with any certainty so far forward, and I prefer to make the assumptions we have made against ourselves; and so, at its very best in favour of our opponents and at its very worst for us we must need at least the amount for which we ask, and indeed you may think we need more.

(President): I still do not understand that assumption. Assume that your total net receipts were going to be, in 1960 or 1961, not the £5m. for which you have budgeted in 1959, but £10m. Then our conclusion as to what extra revenue powers you ought to have would be different from what they would be if we assume your net receipts for 1960-1961 would be £5m.

(Mr. Fay): The net receipts for 1960 must remain precisely the same as for 1959 unless there is any alteration in any item; I have postulated no alteration in price or wage levels or in passenger receipts.

(President): No alteration downwards?

(Mr. Fay): No continuation of the downward trend.

(President): But why should you assume in your favour that there will not be an improvement in passenger receipts and a drop in working expenses?

(Mr. Fay): Because I say that there is nothing which can be pointed to as showing any degree of likelihood whatever of that coming about. If one has to form a view, one may well form the view, looking at the decline for the last nine or ten years, that the decline in the level of traffic will continue; therefore, if I say that it will

remain stationary, I am on safe ground and putting my case low instead of high; and if I say that although we suspect prices will increase we assume that they will not, we are again on safe ground; one cannot for more than a year do more than make those assumptions. It is quite unrealistic to tot up a column of figures which would have a spurious air of accuracy about it; one can only use one's judgment in the light of what one knows. No one has suggested that there is likely to be an improvement in traffic; no one has suggested that there is likely to be a lowering of prices, and in that state of affairs I am quite safe, in my submission, in assuming against myself that they will remain constant.

Then I say: What are the variable factors about which we do know? The variable factors to which we can look forward are the results of the investment programme. We can say how much is going to be invested, how much can be met, if this Scheme is granted in full, from internal savings and the amount to be borrowed. The amount to be borrowed goes to swell the Central Charges; the amount can then be calculated—and evidence has been given about it—by which the working expenses will be swollen by increases in the depreciation charge and then it will be said against me: "Of course, you cannot say you want 100 per cent. of your increase of depreciation because most of that comes out of the money you have heretofore provided for replacement reserve".

We went over this with Mr. James earlier on when he explained, with figures, how that worked on the Piccadilly Line replacement; as the new stock comes into being, so the replacement reserve will fall, and so the depreciation requirement will rise, but the rise is always more than the fall by reason of the matters I have already mentioned.

I cannot do better than to take those factors and make sure that I never put them too high, making every assumption which is favourable to the Objectors, and against myself, and see what the result is; and if the result is that the revenue requirement in the future is higher, as I submit it must be, than in 1959, then my case is established because I have established a case for a Central Charge of £6.0m. in 1959 and this establishes that there is a requirement for no less—indeed it is more—in the subsequent years. If you thought that the requirement for the Central Charges now should be less than £6.0m., taking one year with another on the approach we make, I would ask you then to look forward and say that it will become £6.0m. in a year's time or two years' time at least.

But on that approach and in the light of the evidence you have, there is nothing else than to say, in my submission, that all the factors are known, and if they are known, give the value for the future. If they are not, assume them against us, and I am not frightened of looking at the future in that way.

That is really following what Mr. Hill said when he said: "Oh yes; the Central Charges are going to be well over £6.0m. by 1961, but, of course, there will be some savings". We have given evidence about the savings and I hope I have established that those savings will be swallowed up by the necessity of meeting the depreciation and the interest addition.

Of course, all these calculations are based on the assumption that the Scheme is approved in full and that therefore there is self-financing available in any given year to the extent of £5.0m. of reserve plus the current figure for historical cost replacement; if that is not so, then, of course, the future Central Charges will go up year by year at a very much accelerated rate and if one cannot self-finance something like £40m., or do it only to the extent of the depreciation provision, then, of course, it is a simple calculation to find what 5 per cent. of that is; I think it is £2.0m. on the example I have taken.

(Mr. MacLaren): I wonder if I could interrupt my friend? It is just a small matter on the £19m. The £19m. was produced in evidence after Sir Milner Holland had closed his address and after he had put in his table, which was just simply a representation of the evidence given by Mr. James up to that day, at page 411. I wonder if I might, on behalf of the London County Council, make a very brief comment; I can reduce it, I think, to two sentences.



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[Continued]

(President): Perhaps you can do it in three, Mr. MacLaren!

(Mr. MacLaren): If you look at page 411, which goes to 1963, and take credit for one year less depreciation—that is £3.5m. less than has been taken into account—reducing the credit item from £17.5m. to £14.0m., but still treating the amount expended, as it is the only evidence we have of the items of expenditure, at £44m., it would seem a simpler way of resolving this problem, because the £19.0m. does lie well in the future and we know very little about it. The effect of that is to reduce the credit from £0.7m. to £0.6m.

I submit that that is a very simple way of looking at the matter, and it avoids going into the whole question of what this £19.0m. is to be spent on, the effect it will have and many things we do not know about.

(Mr. Fay): Let me say at once that it was not my intention originally to look ahead to what would be the capital expenditure by the end of 1963; we contented ourselves with looking to the end of 1961. This table came into being because Mr. James, when he gave evidence after being recalled for the purpose—it not having been put to him in cross-examination—gave evidence about the savings and said: "I cannot give useful evidence about the savings up to the end of 1961 because the programme is going up to the end of 1963, and I could give you the total savings in that year". But there was no attempt to assess the capital position in 1963.

Sir Milner Holland, however, has assumed—and I do not blame him—having heard that the programmes now starting were going to amount to £44m. by the end of 1960, that that was the end of the story, and he made this calculation accordingly. All I am doing in putting in the £19m. is to put that right if someone wants to go to 1963. But I cannot understand why Mr. MacLaren wants to take one year off from the footnote; the difference is two years, and it is indeed—he is right in drawing attention to the footnote—where the fallacy of Sir Milner Holland's table lies, and that is what I endeavoured to correct by the statement I made as soon as it was appreciated. It is a statement which I would at any time buttress by further evidence by Mr. James, and I would offer him to my friend for cross-examination—but my friend is not terribly keen on cross-examining!

I think that is all I want to say about Central Charges, and I pass on now to replacement reserve.

On the matter of replacement reserve, for which we ask for the provision of a sum of £3.0m., I start with this proposition of fact, that the earning of enough money to provide a replacement reserve is and always has been the avowed financial object of the British Transport Commission. In the 1948 Accounts and Report at page 196, there appears paragraph 39 of the Notes to the Accounts, and this note to the very first annual account of the Commission reads as follows: "As and when earnings are available for the purpose, it is intended to make further allocations out of profits year by year to a Replacement Reserve towards meeting the increased cost of replacement as compared with the gross book values upon which the depreciation provision is computed".

That Note, Sir, has appeared year by year in the Accounts; it is Note No. 16 on page 12 of the most recent Accounts. I will not read it out; it is in similar form, and it points out that the allocation of some £25m. would have been the appropriate allocation to replacement reserve for the Commission for the year 1957.

(President): Yes; turn to page 45 of the 1948 Accounts, would you, Mr. Fay? What does what is under (f) mean?

(Mr. Fay): This is the old controversy in which the Inland Revenue take part, I think, as to whether replacement provision is a charge to revenue or an appropriation out of revenue, is it not, Sir?

(President): Well, it has a reference to that, yes, but are they not saying that the accounts are drawn up on the footing, because they think it wise that until they make a profit and are able financially to appropriate something out of the profit, that the depreciation should be on the actual cost and not the historical cost basis? I do not want to read the whole of (a) to (f)—

(Mr. Fay): I do not think it is connected in any way with the making of a profit, Sir; I think it is generally followed, largely I suppose in commercial companies, because the Tax Authorities insist upon it and write it off if it is done otherwise; but depreciation must be on historic cost in those circumstances, and that being so, you cannot have a revenue reserve to catch up with depreciation unless you have a revenue surplus to take it out of.

(President): Just leave out taxation and the Inland Revenue; you say that as a charge many working expenses must be on historic cost—why?

(Mr. Fay): For no reason at all, Sir. I do not think I said that; I said that the practice, largely influenced, I thought, by the practice of the Inland Revenue, led to that. There are two ways of doing it; in the Herbert Report they refer to the controversy between accountants as to which method should be adopted, and they say they do not think it matters.

(President): If there is nothing against it, why in the accounts, in the form in which they have been drawn up since 1948, have not the Commission charged depreciation on a replacement basis against working expenses?

(Mr. Fay): I do not know, Sir. I do not know that that question has ever been put to the witnesses. It surely cannot affect the matter?

(President): It has always puzzled me. The interpretation I put on it is inconsistent with the note in the accounts; it is inconsistent with the passage you rely on, which you quoted from the note in the Accounts.

(Mr. Fay): With respect, I should like to follow that suggestion. Surely there is consistency there; the Commission are saying: "We charge depreciation proper on historic cost as is the practice; we want to charge depreciation on a replacement basis, and the balance we propose to do by way of appropriation out of profit. That is a replacement reserve, when we can"—and of course if they had had a surplus, they would have been able to do it.

(President): Yes; it all turns on "when we can". It would have reduced their working surplus if they had sought to increase their depreciation charge up to the level required to enable it to meet replacement cost?

(Mr. Fay): Yes.

(President): That is the only thing—"when we can"; it would produce a deficit instead of the surplus which appeared in one or two years.

(Mr. Fay): Yes, that is taking it on the "two stages" view. One could have one replacement cost depreciation or two stages, and I should have thought from the knowledge I have that this is the common way of doing it. It is certainly the way which is now adopted by the Electricity Authority following the Herbert Report.

(President): I expect they pay tax—I do not know, but I am not going to be led into the Electricity Authority's accounts.

(Mr. Poole): The auditors would not allow them to do otherwise, would they, than to appropriate out of profits? For the British Transport Commission they could not appropriate out of non-existent profits, and they could not produce a bigger deficit on the year by that amount in their accounts.

(Mr. Fay): I suppose they could have done so if they had done it in the way the President suggests, by having depreciation on a replacement basis; that would simply have produced a working deficit instead of a working surplus, and would have swollen the deficit at the present date.

I am reminded that Mr. James did advert to the two ways of dealing with the matter on page 79, in Question 666, where he says: "There is a discussion as to whether you treat your replacement provisions as a charge against profits or as an appropriation of profits. The appropriation theory is accepted by the Institute of Chartered Accountants, but I must say that for my own present purpose I am not particularly interested in that argument. The necessary thing is to have enough profits to enable you to make the provision, and whether you charge it above the line or below the line as a provision is just a matter of book-keeping which follows getting the necessary profits".

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[Continued]

At a time when the Commission as a whole is not making a sufficient working surplus to enable it to adopt the other course, it would have been futile to institute a replacement reserve or to institute a replacement depreciation system—a system of depreciation above the line of their replacement costs—because that would simply have produced a working deficit and it would not have produced the money; the whole object of this is to get the money to finance capital development and strengthen the body of the organisation accordingly.

If it is crossing your mind, Sir, that the Commission are speaking with two voices and paying lip service to the provision of replacement reserves while at the same time being careful not to create one, I would say at once that that is quite contrary to all they have said year after year in report after report. They have said that they want to have a replacement reserve, and we shall have a replacement reserve when circumstances permit; and they have said time and again within these four walls at these inquiries that they want to have a sufficient surplus on London Transport to enable London Transport to pay its share of such a reserve. They said it with great force in 1950, as I submit, again in 1951, and then being rather discouraged, and the time perhaps not being propitious, less was heard about it. But the paragraph remains in the Accounts; the paragraph remains at the foot of the exhibit which used to be called BTC 1, and it has always been the intention and aim of the Commission to arrive at this consummation. They have been completely consistent; when they were before you on the Merchandise Charges Scheme, they were before you on a set of costings prepared by Mr. Tait, in which he costed the depreciation at replacement prices. The reference to that, Sir, if it is wanted by anyone, is page 97 of the hearing of the Merchandise Charges Scheme, Question 819, in the Fifth Day.

(President): Is that on the wagons?

(Mr. Fay): I think so, Sir.

(President): Do not let us get back to that Scheme; it has become a nightmare. I think they took an interest charge. I will not look at any table which has anything to do with the Merchandise Scheme; I say that at once—I have had quite sufficient.

(Mr. Fay): No, Sir; I was only referring to Mr. Tait's answer to Question 819, where he said—and this is general; it applies to all the depreciation elements in all his costings—"The word 'cost', as we use it, includes interest on the net investment in such of the assets employed in a particular activity as has to be renewed, and also provision at current price levels for the replacement of such assets". I do not think it was in any way confined to wagons; it was applied to all appreciable assets.

(President): He did not go into depreciation; his costing approach made it not necessary for him to go into depreciation. We had better not pursue that, but when you go back to your chambers, Mr. Fay, you might like just to have a look at those tables—it is the first and second sets—and you will not find there any reference to depreciation. That was not the method he followed.

(Mr. Fay): I will pursue that, Sir; he is saying categorically in evidence in that case that costing, as he used the term, included both the interest charge and depreciation.

(President): I have not the least doubt that you are right, but if you have his tables, you will find that his tables necessarily leave out the depreciation.

(Mr. Fay): Yes, Sir; I have no doubt that you are right, and I will have pleasure in renewing my acquaintance with that fascinating subject.

I am also in duty bound to remind you that when the Harbour Scheme was before you, the question of replacement was dealt with and the replacement basis; that is at Questions 80 and 120 in the evidence of Mr. Winchester.

(President): A certain number of harbours were selected, and a certain number were stabilised—

(Mr. Fay): In respect of specified harbours, you increased the charging powers by a percentage merchandise scheme. It was, as it were, an interim scheme and an agreed scheme, and there was no great dispute about any such matters; it was on the contrary, of course, in the Merchandise Scheme.

The point I am making is that the Commission have taken this decision; they have said repeatedly that that is what they wish to do, and they are simply asking to be enabled to carry out a decision, a decision which is one of very considerable importance, as I would submit, to the national economy, if one postulates the question: Should a nationalised body provide for the replacement of its wasted assets out of its earnings, so far as it is able, or should it deal with the increased costs in times of inflation by borrowing, then the answer to that question influences the whole basis upon which the economy of this country is conducted; and as Mr. Lawson said—I think he volunteered this—it is a political question in the wider sense of that term.

It is a fundamental economic question; it is a question directed to the control of the amount of credit and the price at which money is to be lent in the country as a whole, and upon which depends the economic health of the country.

I am not suggesting it is as important a factor as the ability to control the Bank Rate or anything of that sort; but it is a very fundamental question in the national economy and it is a matter which the Commission have decided. They decided it in this sense at the moment they were formed; they have seen no reason to alter it since, and on the contrary they have seen the tide of opinion swing towards the stand they took, now represented by the great authority of the Herbert Report and other documents which have been mentioned in evidence.

What is important perhaps if one seeks to see from any published statement that the view of the Government on the point, one obtains an unequivocal answer in what was said in the debate on the Electricity Bill in the passage I quoted from Hansard in my cross-examination of Mr. Lawson, on the 20th January of this year, column 54.

I do not propose to repeat, or to read, what is in that statement; it was all stated in the cross-examination of Mr. Lawson at page 293 of the transcript in the present case, and I ask you to accept from that statement that one can see quite clearly that the Government policy as regards the nationalised interests is that they should maintain the body of their undertaking out of their savings; they should be self-financing as far as possible, and that they should not, in Sir Oliver Frank's words, have to resort to borrowing savings generated in other sections of the economy. We are really on fundamental economics here, and before I plunge in any further, let me say this—

(President): How long are you going to be, Mr. Fay? You must be some more time, must you not?

(Mr. Fay): Yes, Sir; I think I shall finish by the adjournment tomorrow, but I have a little more to say on replacement reserves.

(President): Yes, I hope so. You did say "by the adjournment tomorrow", but I hope you do not think we are sitting tomorrow?

(Mr. Fay): I am sorry, Sir; I meant Monday.

(President): I think we might adjourn now, unless you would like to finish what you have just been saying.

(Mr. Fay): Perhaps I might dismiss the minor point that I was just dealing with.

It has been suggested that the Commission is in a favourable position, because it borrows from the Government. I am sure we all appreciate that it does not, save under the 1957 Act; it has to go into the market and borrow at current rates. It may get, if the Government think fit, a guarantee, in which case it can borrow at gilt-edged rates; but it is in the market in competition with the increasing demands on money, and that lends emphasis perhaps to what I was about to summarise, the importance to the national economy of this question of whether the nationalised bodies should, as a matter of course, keep their tackle intact—

(President): If they can.

(Mr. Fay): Yes, or whether they should go time and time again to the money market.

(President): And if they can, we are back in the familiar field of whether, in an endeavour to keep their apparatus, whether by replacement depreciation year by year, if in that endeavour they are going to ruin their market—

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[Continued]

(Mr. Fay): If they were going to do that, they would not here be suggesting that it should be done.

(President): Well—that is where “skill and judgment” comes in. If we thought that it would have a very grievous effect on their customers now at this moment to impose an additional working expense of £3-0m. a year, we would be right, would we not, in not providing you with an opportunity of obtaining that extra £3-0m.?

(Mr. Fay): I would say in answer to that question, if it is not a rhetorical one, No, and I would be glad to develop that on Monday morning.

(President): Perhaps it may be that there is nothing to discuss on this; if we are bound by what the Government say and are unwilling to enter into economic considerations, it becomes of great simplicity.

(Mr. Fay): I propose to deal with the merits, as well as the principles.

(President): Everyone seems to agree that you should have a surplus, and among the objects to which you would apply a surplus would be the proper replacement of the apparatus—it seems to me to be a matter of terms and degree. I hope you are not thinking that you will get from this Tribunal a formal pronouncement on the great controversy between the two bodies of accountancy opinion?

(Mr. Fay): No, Sir; I am hoping to get a net revenue of £11-0m.1

(President): I think it is unlikely, too, that we shall decide whether Sir Edward Herbert and his colleagues forgot whether the Electricity Undertaking was running on loan capital.

(Adjourned until Monday, 16th March, 1959, at 11 a.m.)

## CORRIGENDA

## PROCEEDINGS, SIXTH DAY—WEDNESDAY, 4TH FEBRUARY, 1959

Page 136, column 2, Question 1487, line 3—for “is possibly” read “must come out”

## PROCEEDINGS, FOURTEENTH DAY—WEDNESDAY, 18TH FEBRUARY, 1959

Page 305, column 2, Question 4591, line 1—delete “by”

Page 305, column 2, Question 4594, line 3—delete “by”

Page 306, column 2, Question 4633, line 2—delete second “not”

Page 307, column 1, Question 4655—for “loan” read “lands” (twice)

Page 307, column 1, Question 4657, line 2—for “attributing a” read “ascertaining the”

Page 307, column 2, Question 4677, line 1—for “passing from” read “pausing at”

Page 309, column 2, Question 4758, lines 1 and 2—for “approaches” read “estimating”

Page 311, column 1, Question 4816, line 1—for “include” read “exclude”

Page 314, column 2, Question 4939, line 2—for “purpose” read “purposes”

Page 314, column 2, Question 4939, line 4—for “amount” read “amounts”

Page 314, column 2, Question 4939, line 7—for “chargeable” read “charges”

Page 314, column 2, Question 4939, line 7—for “things” read “receipts”

Page 314, column 2, Question 4940, line 2—for “amount” read “amounts”

## PROCEEDINGS, FIFTEENTH DAY—THURSDAY, 19TH FEBRUARY, 1959

Page 330, column 2, Question 5355, line 2—for “metal” read “metals”

Page 333, column 1, Question 5456, line 1—for “Smith” read “Smiles”

Page 333, column 1, Question 5456, line 2—for “profligance” read “profligacy” (twice)

## PROCEEDINGS, SEVENTEENTH DAY—MONDAY, 23RD FEBRUARY, 1959

Page 370, column 2, paragraph 11, line 6—for “instructions” read “instruments”.

## PROCEEDINGS, EIGHTEENTH DAY—FRIDAY, 27TH FEBRUARY, 1959

Page 397, column 2, paragraph 5, lines 18 and 23—“£4-9m.” should read “£5-9m.”

Page 398, column 2, paragraph 3, line 15—“at” should read “as”

Page 398, column 2, paragraph 5, line 9—“6” should read “16”

Page 398, column 2, paragraph 5, line 12—“yield of” should read “receipts from”

Page 401, column 1, paragraph 4, line 28—“£11,610,000” should read “£7,610,000”

Page 402, column 1, paragraph 2, line 15—“13” should read “30”

Page 404, column 1, paragraph 5, line 1—“in” should read “after”

Page 404, column 1, paragraph 5, line 2—after “£45-7m.” insert “in table IV—7”

Page 410—Delete correction for page 136 and insert:—

Page 136, column 1, Question 1481, line 20—for “not” read “now”



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